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TO AMEND THE SHIPPING ACT, 1916

HEARINGS
BEFORE THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
EIGHTY-FIFTH CONGRESS
SECOND SESSION
ON
H. R. 12751



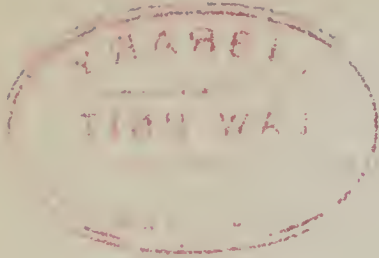
TO AMEND THE SHIPPING ACT, 1916

JUNE 3, 4, 5, AND 6, 1958

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CONTENTS

	Page
Text of H. R. 12751-----	1
Testimony of—	
Bartle, Tom., of Lykes Bros., Steamship Co., Inc.-----	216
Bucy, Charles W., Assistant General Counsel for Marketing and Regulatory Laws, Department of Agriculture-----	142, 185
Carpenter, John Tilney, State Marine and Isthmian Lines-----	157
Cocke, Alex C., vice president, Lykes Bros. Co., Inc., accompanied by H. A. Carlys, chairman, Gulf Associated Freight Conferences, and Harold W. Roberts, vice president, Texas Transport and Terminal Co., New Orleans-----	115
Crinkley, Matthew S., executive vice president, accompanied by John J. O'Connor, Isbrandtsen Co., Inc., New York-----	190
Dewey, Ralph B., president, Pacific American Steamship Association--	71
Furness, Robert, attorney at law, Washington, D. C-----	132
Gardner, Warner W., attorney, American President Lines-----	212
Guill, Ben H., vice chairman, and Thomas E. Staken, Jr., member accompanied by E. Robert Seaver, General Counsel, and Lloyd Tibbott, chief, Federal Maritime Board-----	241
Gwinup, George E., manager, traffic department, The Rubber Manufacturers Association, Inc., New York, N. Y-----	134
Haddock, Hoyt S., codirector, AFL-CIO, Labor-Management Maritime Committee, Washington, D. C-----	210
Hamm, William, Alcoa Steamship Co., attorney-----	157
Hudtloff, Martin J., director, Transportation and Storage Services Division, Commodity Stabilization Service, Department of Agri- culture-----	97
Ishewood, Felix, assistant vice president, American Export Lines, Inc-----	158
James, Leonard G., of Graham & Rolph, San Francisco, Calif-----	217
Labagh, P., Steele, traffic director, California Packing Corp., represent- ing Cannery League of California and Dried Fruit Association---	144
Maloney, Walter E., general counsel; accompanied by Alvin Shapiro, vice president, American Merchant Marine Institute-----	3
McAshan, S. M., Jr., vice president, American Cotton Shippers Association, accompanied by John C. White, counsel-----	14
Moore, William T., president, Jerry Donovan, financial vice president; and Ira L. Ewers, counsel, Moore-McCormack Lines, Inc., New York, N. Y-----	148
O'Connor, John J., lawyer, Isbrandtsen Lines, accompanied by Richard W. Kurrus-----	29
Pasche, A. J., chairman, Associated Latin American Freight Con- ferences-----	237
Phillips, Joseph B., traffic manager, Columbian Rope Co., Auburn, N. Y-----	143
Purdon, Alexander, executive director, Committee of American Steamship Lines-----	155
Sinclair, J. A., director, World Trade and Transportation Depart- ment, Commerce and Industry Association of New York-----	87
Stein, Robert M., vice president, Stein, Hall & Co., Inc., New York, N. Y-----	162
Stetson, T. R., Pacific Coast Borax Co., division, United States Borax & Chemical Corp-----	159
Talmage, George E., Jr., vice president of traffic, States Steamship Co., San Francisco, Calif-----	80
Triggs, Matthew L., assistant legislative director, American Farm Bureau Federation-----	167
Wierda, Donald F., general freight traffic manager, United States Lines Co-----	19

Additional information—

Agriculture Department, Commodity Credit Corporation, report of title I operations (Public Law 480) etc-----	Page 101
Alexander, Arthur A., vice president, eastern division, American President Lines, Ltd., submitted statement-----	210
American Cotton Shippers Association:	
Letter, June 2, 1958, signed John D. Locke-----	85
Letter, June 4, 1958, signed John C. White-----	18
Resolution adopted in Memphis, Tenn., April 25-26, 1958-----	15
American Merchant Marine Institute, Inc., letter, June 9, 1958, signed Alvin Shapiro, vice president, with enclosure table, re United States flag line companies in foreign trade, May 1, 1958-----	6
Americo Marin, telegram, June 4, 1958-----	141
Andrews, Charles R., chairman, on behalf of member lines of the Trans-Atlantic Associated Freight Conference, submitted statement-----	254
Berry & McCarthy Shipping Co., telegram, June 5, 1958-----	165
Board of Commissioners, port of New Orleans, telegram, June 2, 1958, signed, Ralph P. Nolan, president-----	41
Burlap and Jute Association, telegram, June 3, 1958, signed, A. J. Merritt, chairman, business relations committee-----	84
Centennial Mills, Inc., telegram, June 4, 1958-----	93
Chamber of Commerce of the United States, letter, June 6, 1958, signed, Clarence R. Miles-----	215
Chromium Mining & Smelting Corp., telegram, June 5, 1958, signed D. D. Tipton, vice president-----	166
Combustion Engineering Co., telegram, June 5, 1958, signed J. B. Lowe, general traffic manager-----	165
Committee of American Steamship Lines, letter, June 2, 1958, signed Solon B. Truman, chairman-----	156
Connell Bros. Co., Ltd., telegram, June 4, 1958, signed H. A. Magnuson, president-----	92
Crown-Zellerbach Corp., telegram, June 4, 1958, signed J. G. Vollmar, general traffic manager-----	92
Dennean, James A., chairman, Far East Conference, submitted statement-----	250
De Sola Bros., Inc., telegram, June 5, 1958-----	166
Dow Chemical Co., telegram, June 4, 1958, signed J. A. Kenny-----	140
Dyson Shipping Co., telegram, June 3, 1958, signed S. F. Coron, vice president-----	84
Eastman Kodak Co., telegram, June 3, 1958, signed Stanley R. Thorpe, foreign traffic manager-----	92
Export Leaf Tobacco Co., telegram, June 4, 1958, signed L. A. Glass, traffic manager-----	141
Foley, George F., chairman, River Plate and Brazil Conference, submitted statement-----	261
Foremost Dairies, Inc., telegram, June 3, 1958, signed L. H. Wolters, transportation manager-----	94
Fuller & Co., W. P., telegram, June 4, 1958, signed W. B. Gribble, export department-----	140
Furness, Robert, attorney, letter, May 31, 1958-----	68
Frankfurter, Justice Felix, excerpt from Supreme Court of the United States, Nos. 73 and 74, October term, 1957, pages 20 and 21-----	1
Galloway, William C., chairman, Pacific Westbound Conference, submitted statement-----	263
Getz Bros. & Co., telegram, June 3, 1958, signed L. L. Goodman, president-----	93
Goldblatt, Louis, secretary-treasurer, International Longshoremen's and Warehousemen's Union, telegram, June 6, 1958-----	265
Goldman, Herman, attorney and counselor at law, letter, June 16, 1958, signed Elkan Turk-----	267
Grays Harbor Exportation Co., telegram, June 2, 1958, signed L. D. Warrick-----	86
Independent Fur Brokers, Inc., telegram, June 2, 1958, signed E. C. Classen-----	94
Japan-Atlantic/Gulf Freight Conference, brief filed, September 13, 1957-----	75

Additional information—Continued

Keating, Ralph, general manager, Freight and Passenger Departments, on behalf of United Fruit Co., submitted statement.....	Page 256
Labor-Management Maritime Committee, letter, June 6, 1958, signed Earl W. Clark and Hoyt S. Haddock, codirectors.....	211
Libby, McNeill & Libby, telegram, June 3, 1958, signed C. B. Weston.....	85
Magner, James E., executive vice president, on behalf of Grace Line, Inc., submitted statement.....	257
Mitsubishi International Corp., telegram, June 3, 1958, signed Bunichiro Taiabe, president.....	91
M. J. B. Co., telegram, June 3, 1958.....	94
Marshall, Robert W., director, E. I. du Pont de Nemours & Co., Inc., letter, June 9, 1958.....	266
Marsman Commercial Co., Inc., telegram, June 3, 1958, signed L. A. Phillips.....	93
Nash, James F., on behalf of United States Atlantic and Gulf-Indonesia Conference, etc., submitted statement.....	265
National Association of Alcoholic Beverages Importers, Inc., telegram, June 2, 1958, signed Harry L. Lourie, executive vice president.....	86
National Association of Waste Material Dealers, Inc., telegram, June 5, 1958, signed Ocean Traffic Committee.....	165
National Council of American Importers, Inc., telegram, signed Harry S. Radcliffe, executive vice president.....	92
Nestle Co., The, telegram, June 3, 1958, signed C. D. Roxby, general traffic manager.....	91
New Orleans Board of Trade, telegram, June 2, 1958, signed Albert Hanemann, president.....	41
Nickey Bros., Inc., statement submitted by Sam Nickey, Jr.....	166
O'Connor, John J., attorney, Washington, D. C.:	
Letters:	
June 4, 1958, to—	
Herbert C. Bonner.....	70
Robert Furness.....	69
June 30, 1958, re foreign lines, etc.....	269
October 21, 1950, to R. S. Wintemute.....	222
Three different forms used for dual-rate systems.....	59
Oliver International, S. A., telegram, signed S. W. White, Jr., president.....	84
Pacific Coast-Latin American Conferences, list of, submitted by Leonard G. James, of Graham & Rolph, San Francisco, Calif.....	217
Phillips, John M., on behalf of the India, Ceylon, and Burma Outward Freight Conference, submitted statement.....	260
Puget Sound Pulp & Timber Co., telegram, signed Russell de Lopez, assistant to the vice president.....	85
Quaker Oats Co., The, letter, June 6, 1958, signed J. R. Staley, vice president.....	161
Radcliff, Harry S., executive vice president, National Council of American Importers, Inc., letter, June 6, 1958.....	266
Revonah Spinning Mills, Hanover, Pa., telegram, June 2, 1958; also signed by The Linen Thread Co., Inc., Paterson, N. J.; Columbian Rope Co., Auburn, N. Y.; The Schlichter Jute Cordage Co., Philadelphia, Pa.; and Delaware River Jute Mills, Philadelphia, Pa.....	85
Sackett, David H., general secretary, Calcutta-United States of America Conference, submitted statement.....	259
Sanford, L. R., president, Shipbuilders Council of America, letter, June 18, 1958.....	268
Semack Trading Co., Inc., telegram, June 4, 1958.....	140
Shipping Act, 1916, sections 14, 15, 16, and 17.....	42
Slater, Frank G., vice president, American Export Lines, Inc., submitted statement.....	158
South Carolina State Ports Authority, letter, June 5, 1958, signed T. Carlisle Crump, administrative assistant.....	137
States Steamship Co., San Francisco, Calif.:	
Comparison of actual and percentage increases made in liner freight costs on representative commodities, etc.....	83
Statement filed by Maritime Administration, incorporated in appendix 16 of report.....	82

Additional information—Continued	Page
Sunkist Growers, Inc., telegram June 4, 1958-----	140
Sunsweet Growers, Inc., telegram, June 4, 1958, signed R. L. Johansen-----	141
Textile Bag Manufacturers Association, telegram, June 3, 1958-----	93
United States Borax & Chemical Corp., letters, May 29, 1958, signed T. R. Stetson, manager, export sales department-----	39, 161
United States Lines Co., letter, June 11, 1958, signed D. F. Wierda, general freight traffic manager-----	27
Universal New York, Inc., telegram, June 3, 1958, signed Ira Blaustein, treasurer-----	84
Van Reekum Paper, Inc., telegram, June 4, 1958, signed J. V. Carena, president-----	141
Wedemann & Godknecht, Inc., telegram, June 3, 1958-----	84
Weirton Steel Co., telegram, June 2, 1958, signed C. B. Marshall----	83
Ziel & Co., Inc., telegram, June 3, 1958-----	93

TO AMEND THE SHIPPING ACT, 1916

TUESDAY, JUNE 3, 1958

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D. C.

The committee met at 10:05 a. m., pursuant to notice, in room 219, Old House Office Building, Hon. Herbert C. Bonner (chairman) presiding.

The CHAIRMAN. The committee will come to order. We will begin hearings this morning on H. R. 12751 and similar bills H. R. 12748, H. R. 12758, and H. R. 12794 introduced by the Chair and by Mr. Tollefson, Mr. Allen, and Mr. Dellay.

(H. R. 12751 is as follows:)

[H. R. 12751, 85th Cong., 2d sess.].

A BILL To amend the Shipping Act, 1916

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Shipping Act of 1916, is amended by inserting at the end thereof the following: "*Provided*, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

(Justice Frankfurter excerpt from Supreme Court of the United States, Nos. 73 and 74, October term, 1957, pp. 20 and 21 follows:)

While limits have been imposed upon enterprise in meeting competition, which is itself the governing principle of our economic system, these limits, embodied in the antitrust laws, were found to be inapplicable to, because destructive of our national interest in, the international ocean transportation industry. The United States obviously could not completely regulate the foreign carriers with whom American carriers compete (not to mention the carriers that serve foreign shippers with whom American shippers compete). In view of the prevailing characteristics of the industry, it early became apparent that it would, on the whole, be in the national interest to tolerate some practices of steamship lines that in other industries would be deemed inadmissible. For the alternative, so it was concluded, would be to put it within the power of unregulated foreign carriers seriously to injure American firms—both carriers and shippers—if not,

indeed, to put them out of business. And so, in the development of a scheme for regulating this international industry, self-protective measures by way of collective action were not left to the condemnation of the Sherman and Clayton Acts. In order to appreciate the Shipping Act of 1916 as an attempt to balance the need for some regulation with the economic and political objections to sweeping the shipping industry under the antitrust concept, the circumstances that begot the Act must be recalled.

The CHAIRMAN. This legislation was introduced at the request of major segments of the shipping industry, and is intended to remove any doubt as to the continued legality of any dual rate contract arrangements in use by the members of a steamship conference until June 30, 1960. Proponents of this legislation represent that it is necessary as the result of the recent decision of the Supreme Court of the United States disapproving a dual-rate contract system proposed by the Japan-Atlantic and Gulf Freight Conference, whereby contract rates to shippers who signed an exclusive patronage contract with the conference would be substantially lower than noncontract rates. The Court held that in view of the circumstances in the particular case the rate system was illegal under section 14 of the Shipping Act of 1916.

The bill is a measure designed to assure continued stability in ocean freight rates for a period of time adequate for Congress to make a thorough study of the whole subject, with particular reference to the Shipping Act of 1916.

The Chair wishes to state that it realizes that there are differences of opinion on the matter before us. We are approaching this with an open mind, and intend to hear spokesmen representing different groups and different viewpoints.

We have set aside 3 days this week, starting today, to hear those who wish to present their views to the committee on the proposed legislation. In view of the very broad aspects of the steamship conference system, it is necessary at this time that testimony be held as closely as possible to the immediate question of whether or not it is desirable that the status quo be maintained for a 2-year period while careful study is given to not only the dual rate problem, but the conference system generally.

Before proceeding with the first witness I would like the record to show that the Chair is in receipt of a large number of communications urging the enactment of this interim legislation. In addition, there have been requests for time by others who wish to speak in opposition.

We will have practically 2 hours this morning. To expedite this matter, if it meets the convenience of the committee, I hope, during the general debate this afternoon, that we might sit for an hour or an hour and 20 or 30 minutes.

The first witness this morning is Mr. Maloney of the American Merchant Marine Institute.

I have 5 minutes listed here. I do not, of course, want to limit the time of anyone but I am not going to let somebody run on and on forever. I want to get right down as I stated in the opening statement to the matter of whether it is advisable to pass this interim bill. That is the matter we want to get down to. I am not going to sit here and let some witness go on for an hour or so.

STATEMENT OF WALTER E. MALONEY, GENERAL COUNSEL; ACCOMPANIED BY ALVIN SHAPIRO, VICE PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE

Mr. MALONEY. Mr. Chairman and members of the committee, my name is Walter E. Maloney, 40 Wall Street, New York City. I appear before your committee today as general counsel of American Merchant Marine Institute, Inc., which maintains offices at 11 Broadway, New York, N. Y., and at 1701 K Street NW., Washington, D. C.

The institute is an association of 49 companies owning and operating the great preponderance of American-flag oceangoing tonnage. These vessels are of all types—passenger vessels, freighters, tankers, colliers, and specially constructed ships—and operate in all services, both foreign and domestic. It is on behalf of these member companies that the institute appears here today in support of H. R. 12751, H. R. 12758, and H. R. 12748.

At the outset I wish to commend your chairman and the members of your committee for your promptness in initiating hearings on this most important subject. It is most reassuring to the owners of American-flag vessels to know that in your committee they have a group extremely well informed on the workings of the industry and ready to move quickly when the industry is confronted with a problem of this magnitude.

Put in the simplest terms, the American shipping industry faces this situation: By its action of May 19, 1958, in *Federal Maritime Board v. Isbrandtsen Company, Inc., et al*, the United States Supreme Court threw into chaos the entire steamship conference system. In that case the Court outlawed the dual rate system of the Japan-Atlantic and Gulf Freight Conference. The Court found this system to be a "predatory device," instituted for the purpose of curtailing the competition of a nonconference company. No one can tell at the moment the extent to which the conferences will be affected by this decision. Will a dual-rate system survive if it is not directed at a single nonconference competitor? Will it survive if at the time of its inauguration there is no nonconference competition? Or, as construed by Justice Frankfurter in his dissenting opinion, does the decision of the majority go so far as to outlaw all dual-rate systems? At the moment we can be certain of only one thing—unless legislation to this effect is enacted, the steamship industry will be torn by litigation for some years to come.

Looking at the picture from the viewpoint of the American steamship owner, we are vitally concerned with the continued effectiveness of the conference system. It is as simple as this: Without the dual-rate systems it is highly unlikely that the steamship conferences can survive in the face of unbridled competition from nonconference companies. If the conference system fails, the American-flag company, the high-cost operator, will be the first to be forced to the wall. Particularly in this period of idle ships, poor cargo offerings, and steamship company failures, it is frightening to face the possibility of cutthroat competition and rate wars which must result inevitably in forcing the American-flag operator out of the service.

While most members of your committee are thoroughly familiar with the setup and operations of steamship conferences, the picture may present somewhat of a mystery to some of you, and some background information would seem appropriate.

A "conference" is a loose association of steamship lines operating vessels of different flags. Each member of the conference operates regularly scheduled vessels in general cargo trade over a particular trade route. The conference idea is not new—as early as 1875 steamship lines trading between England and India organized a conference. Since that time the conference system has experienced a rapid and steady growth, and conferences are now in existence on all seallanes where trade development and general cargo are the primary interests of steamship operators. There are now approximately 125 separate conferences operating out of United States ports alone.

In international trade, where not one but a number of nations are directly involved, it is impracticable to fix freight rates by governmental action. Instead, rates are made and changed by conference action. The formation and operation of steamship conferences in foreign trade routes from and to this country is approved by statute (Shipping Act, 1916, sec. 15; 46 U. S. C. 814). The statute operates as an exception to the antitrust laws. The agreement establishing the conference, as well as any modification or cancellation thereof, must be filed immediately with, and must be approved by, the Federal Maritime Board. Membership in the conference is open to all companies serving the particular trade route or area.

Most conferences have some form of arrangement designed to bind their shippers to ship their goods by vessels operated by members of the conference. These arrangements are sometimes referred to as "dual-rate systems," "exclusive patronage systems," or "contract/non-contract rate systems." While the systems used in United States foreign trade routes are far from uniform, they generally provide 2 levels of rates—1 for shippers who agree to make their shipments on the vessels of conference carriers only, and 1 for shippers who do not so agree. The option is available to all shippers, large or small. Agreements of this nature have been in use for more than 40 years. These agreements form the very foundation on which is based most of our foreign commerce. To prevent a complete disruption of this commerce, as it has been carried on for all these years, H. R. 12751, H. R. 12758, and H. R. 12748 have been introduced and referred to your committee.

It is obvious from the language of these bills that they are not designed as any permanent solution to the problem created by the Supreme Court decision. By their terms the bills would expire June 30, 1960. But they would afford the steamship companies an opportunity to determine to what extent if any, their own conferences are affected by the decision and if need be, to make adjustments to accommodate themselves to this upheaval in their established manner of doing business. Above all, this legislation would give your committee an opportunity to study the situation and to design legislation calculated to provide permanent relief. Meanwhile, these bills would continue in existence the situation which prevailed immediately prior to the Court's decision.

I call your particular attention to the fact that these bills give the Federal Maritime Board authority to disapprove, cancel, or modify

any dual-rate contract arrangement even though the validity of the particular system had not been challenged prior to the decision of the Supreme Court.

I would not attempt to analyze for you today the ultimate impact of the Supreme Court's decision. I submit that it is sufficient for your purposes to realize that it is susceptible of several interpretations ranging from one of quite limited effect to that as far reaching as the suggestion of Justice Frankfurter that the decision outlaws all dual-rate systems. Methods of operation and business practices in use for many years are most certainly in jeopardy. In the absence of interim legislation, the conference systems, and particularly American-flag members of the conferences, may be irreparably damaged even while studies are being made in the interests of permanent relief. I am sure that you will conclude that it is in the best interests of the American merchant marine that Congress enact legislation in the form of H. R. 12751, H. R. 12758, and H. R. 12748.

Thank you, Mr Chairman.

The CHAIRMAN. Will you tell the committee what percentage of the liner companies, the tramps and tanker companies, favor this bill?

Mr. MALONEY. Well, sir, I am speaking on behalf of the American Merchant Marine Institute and can assure you that it has the unanimous and wholehearted support of all companies in our association without regard to the type of service that they happen to be in.

Now, I can also assure you from discussions that I have had that this bill has extremely wide support among other companies who do not belong to our association.

The CHAIRMAN. What companies not involved might favor this legislation?

Mr. MALONEY. I do not quite follow your question, sir. Do you mean not involved in the litigation?

The CHAIRMAN. Yes.

Mr. MALONEY. Well, we have in our membership 49 companies that are not involved. States Marine Lines is here. They do not happen to be a member of our association. I know that they are here to support this legislation.

There are west coast companies, members of the Pacific American Steamship Association, who will be represented here through the association and perhaps individually and they support the legislation.

The CHAIRMAN. How many companies are there who are American-flag operators that are opposed to the dual-rate system?

Mr. MALONEY. Opposed to the dual-rate system, sir?

The CHAIRMAN. Yes.

Mr. MALONEY. I know of my own knowledge only of one, the Isbrandtsen Co. I have read in the press that company's opposition to legislation of the sort which you and Mr. Tollefson and Mr. Allen have introduced.

I know of no other company, at the moment at least, which has expressed any opposition to this legislation.

The CHAIRMAN. Could you furnish for the record, at a later date in all probability, the number of American-flag companies that are favorable to this, and their names and the number of ships they operate, and then the reverse?

Mr. MALONEY. I will be very happy to do so, sir, and I may say with your permission that I will solicit information from other groups in addition to our own and will endeavor to get a composite list.

(The information referred to follows:)

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
Washington, D. C., June 9, 1958.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: During the course of the Institute's appearance in connection with H. R. 12751, you asked that there be furnished to the committee a list of companies by name showing their ownership of vessels and their position in connection with the legislation heard. Mr. Maloney, the Institute witness, indicated that this would be done, and I therefore hope you will consider the attached for inclusion in the record on page 11 of the unrevised transcript of the hearings, June 3, 1958.

The tabulation shows that of the 428 vessels in liner service under United States flag as of May 1, 1958, 414 vessels, or 96.7 percent, are owned by companies who support the legislative proposal. Only the owners of 3.3 percent of the total number of American-flag liner vessels, or but 1 company opposes the bill.

Sincerely yours,

ALVIN SHAPIRO,
Vice President.

United States flag liner companies in foreign trade (as of May 1, 1958)

	Number of vessels owned	Percent of total	Position re H. R. 12751
Member of 1 or more conferences:			
Aleco Steamship Co.....	16	-----	Support.
American Banner Line.....	1	-----	Do.
American Export Lines.....	26	-----	Do.
American Mail Line.....	8	-----	Do.
American President Lines.....	25	-----	Do.
Bloomfield Steamship Co.....	4	-----	Do.
Central Gulf Steamship Corp.....	2	-----	Do.
Farrell Lines, Inc.....	16	-----	Do.
Grace Line, Inc.....	33	-----	Do.
Gulf & South American Steamship Co.....	4	-----	Do.
Isthmian Line, Inc.....	24	-----	Do.
Lykes Bros. Steamship Co.....	49	-----	Do.
Mississippi Shipping Co.....	14	-----	Do.
Moore McCormack Lines, Inc.....	38	-----	Do.
The Oceanic Steamship Corp.....	6	-----	Do.
Pacific Far East Line.....	11	-----	Do.
Prudential Steamship Corp.....	3	-----	Do.
States Marine Corp.....	15	-----	Do.
States Steamship Co.....	13	-----	Do.
Stevenson, T. J. & Co.....	1	-----	Do.
Stockard Steamship Corp.....	1	-----	Do.
United Fruit Co.....	23	-----	Do.
United States Lines Co.....	55	-----	Do.
Waterman Steamship Corp.....	26	-----	Do.
Subtotal.....	414	96.7	
Nonconference member: Isbrandtsen & Co.....	14	3.3	Oppose.
Total.....	428	100.0	

The CHAIRMAN. Are the opponents of this dual rate system strictly American-flag operators or foreign-flag operators?

Mr. MALONEY. The proponents of the system?

The CHAIRMAN. No; are those in opposition to the system strictly American-flag operators or dual operators, American and foreign flag?

Mr. MALONEY. As I said, the only opponent of this system that I know of is Isbrandtsen. To my own knowledge, they have no foreign-flag ships. I am not positive but I do not think they have any.

The CHAIRMAN. What percentage of the American-flag operators belong to conferences?

Mr. MALONEY. I think it is very close to 100 percent.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. Mr. Chairman.

Mr. Maloney, pursuing the line of questioning a little further, could you tell us what categories of shipping are not usually involved in conference systems? For example, I would imagine that a purely tramp operation would not be in a conference. Would that be true?

Mr. MALONEY. That is true, sir. It is easier, if I can, to approach it the other way. The conference system is generally made up of carriers who are carrying general cargo. The conferences do not attract the tanker trade. They do not attract the bulk carriers.

Mr. ALLEN. Is there any subsidized line that is not a member of one or more conferences?

Mr. MALONEY. I would like to verify it, sir, but I think there is no subsidized line that does not belong to a conference.

Mr. ALLEN. Are tankers involved in any type of conference?

Mr. MALONEY. I know of no tanker company that is involved in a conference. No, sir. They are mostly contract carriers.

Mr. ALLEN. Excepting the intercoastal and coastwise trade, are there any berth or liner services which are not subsidized or, rather, which are the ones that are not subsidized?

Mr. MALONEY. You are speaking of berth line operators now?

Mr. ALLEN. Yes, sir.

Mr. MALONEY. I think that you have Isthmian, Waterman, Alcoa, States Marine. You excepted the intercoastal; did you not?

Mr. ALLEN. I excepted the intercoastal and coastwise and noncontiguous.

Mr. MALONEY. United Fruit. I believe that is all.

I would like permission to supplement that if others come to mind.

Mr. ALLEN. Would you add Isbrandtsen?

Mr. MALONEY. I think I started with Isbrandtsen or maybe I said Isthmian. They are both in there.

Mr. ALLEN. Is it true to say that with the exception of one berth service all American-flag operators in the berth service are members of conferences and supporting this legislation?

Mr. MALONEY. That is my understanding, sir. I have not talked to all of the companies that I just mentioned. For instance, I have not talked with any one from the Waterman Co. I cannot say right now how they feel.

Let me say, however, that I have heard no opposition from that source.

Mr. ALLEN. We had hearings not long ago which involved some conferences and it developed that there were possibly 1 or 2 American-flag operators in a conference with a number of foreign-flag operators. I presume that that is on the east coast as well as the west coast.

Mr. MALONEY. I think that is true all over, sir, by the mere numerical superiority of the foreign-flag operators.

Mr. ALLEN. Does that system with a preponderance of foreign-flag operators have the effect of putting the control of our rate structure in the hands of the foreign-flag operators in any way to the detriment of the American-flag operators?

Mr. MALONEY. I think not, sir. I think that perhaps the existence of American flag participation in those conferences is most important not only, of course, from our own interest but to the American economy as well.

I do not believe that the numerical superiority of the conferences works to the detriment of the American-flag operator in those conferences.

Mr. ALLEN. You mentioned that the Americans were the high cost operators and would be the first to suffer most in the absence of some conference system.

Mr. MALONEY. Yes, sir.

Mr. ALLEN. Is it not true that as to the subsidized line our subsidy payments put them on a basis of equality of cost with their foreign-flag competitors?

Mr. MALONEY. Well, that does within limits, but it does not guarantee to keep them there, sir. In other words, as you well know, your subsidy program is directed at parity on five elements of cost. They are big elements, true. You have your manning cost, your victualing, your insurance, your repairs. They are big items of cost.

The program is directed to bring the American operator up to parity with his foreign competition.

Now, if his business is good enough but he earns profits in excess of the 10 percent and he gets into a recapture position, that redounds to the Government's benefit.

If, however, through, let us say, cutthroat competition or any other method, the freight is taken away from him, not only will those profits disappear but his 10 percent will disappear.

The subsidy program remains constant through all of this but his earnings drop. There is no guaranty in this program of earnings to the American operator so that if his freight is reduced, if let us say his revenue is reduced either by a loss of the business to a lower cost competitor or by a forced reduction in his own rate structure, then the subsidy program, while it provides an initial support, is no answer to this problem.

Mr. ALLEN. On the contrary, then, does the fact that our operators have high costs other than the subsidized items enable the foreign carriers to use the conference system as a sort of an umbrella enabling them to raise their rates up to a rate that an American carrier must have to keep in existence and thereby cause a higher rate to the shippers than are involved?

Mr. MALONEY. Conceivably, the high cost of the American operator could affect the entire conference-rate structure because if the American operator is in there and he is endeavoring to set rates which will at least keep him above the breakeven point, obviously the foreign-flag operator with his lower costs is going to have more left out of those same rates.

Mr. ALLEN. Could you tell me the approximate percentage differential between the two rates in a dual-rate structure?

Mr. MALONEY. The one in question in this case was slightly under a 10 percent differential by way of a reduction given to the shipper who agreed to give all of his business to conference vessels.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. In the court case, was there something other than the dual-rate system that entered into the decision of the court, and did it specifically apply to the one case before the court or did it apply to the whole thing?

Mr. MALONEY. Yes, sir. The court said in its opinion, after speaking of some earlier decisions which it had been argued were being overruled—

Since, as we hold, section 14 strikes down dual-rate systems only where they are employed as predatory devices, then precise findings by the Board as to a particular system's intent and effect would become essential to a judicial determination of the system's validity under the statute.

Now, in this case in addition to the dual-rate system the court found that it was directed at competition by Isbrandtsen and deemed it a predatory device. That is the only other element in the case, I would say.

I was reading from the bottom of page 19 of the majority opinion.

The CHAIRMAN. On page 19, there is the statement:

In view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing the Isbrandtsen's competition, thus becoming a device made illegal by Congress in section 14, third, we need not give controlling weight to the various treatments of dual rates by the Board under different circumstances.

That is the reason I asked the question.

Mr. MALONEY. That is right, sir. That is the additional element that they found in this case, the use of the dual rate system directed at competition by Isbrandtsen.

Now, as I pointed out, sir, that leads us right to the questions that are in the minds of not only the conference people but of the members of these conferences: Is this case limited to that?

Justice Frankfurter does not think so. He says, "And there should be no mistake but that today's decision outlaws such systems."

He is speaking in this case of all dual rate systems.

Now, we are not convinced he is right, by any means.

The CHAIRMAN. That is the minority opinion.

Mr. MALONEY. We wrote one of the minority opinions.

Justice Burton agreed with him and then Justice Harlan submitted a slightly different view.

It leads us to the point that, while we had this additional element in this case where the dual rate system was used and the court opinion sets forth the history of Isbrandtsen's coming in with rates 10 per cent below the conference and the conference then tried to meet them and they led into a period of competition there where rates were well below the initial rate schedule, then in, I think it was, 1952, the conference instituted this dual rate system.

Now, then the question arises, suppose that they did not have one nonconference competitor standing out as existed in this case. Suppose, for instance, that there were 2 or 3. Is that system outlawed by this opinion?

Furthermore, suppose that they anticipated competition but at the moment it had not gotten into the trade and they put in the dual rate system? Suppose that even without anticipating it they found it desirable among themselves? Are these dual rate systems valid or are they all ruled out by this opinion?

Without interim legislation we are going to have to sit by and wait the protracted litigation which will take place and one by one we will have these questions answered, but meanwhile we feel that irreparable damage will be done. That is why we support wholeheartedly this interim legislation to permit a study of the question and, if your committee sees fit, permanent remedial legislation.

The CHAIRMAN. Without it, is it the thought that continued successful operation of American-flag vessels and the building and replacement program that is contemplated would automatically cease or go into a chaotic condition such that it would have to cease operation?

Mr. MALONEY. Yes, sir. I cannot think of anything more destructive to the confidence of investors in the American merchant marine than the collapse of the conference system.

I do not think an American flag operation can continue successfully without the conference system and if, as I believe, this dual-rate system is essential to the conference system, then once the conference system goes down the high-cost operator is going to be the first one to be put out of the service.

The CHAIRMAN. Mr. Van Pelt?

Mr. VAN PELT. I have no questions.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. I have no questions.

The CHAIRMAN. Mr. Dellay?

Mr. DELLAY. I have no questions.

The CHAIRMAN. Mr. Dorn?

Mr. DORN. What besides rates do these conferences agree on?

Mr. MALONEY. Do you mean among themselves? They agree generally to maintain a stability of service or regularity of service, to have a certain number of ships in that trade regularly scheduled. All of these operators are liner operators, regularly scheduled operators.

Mr. DORN. Do they agree, for instance, that they will all use a certain trucking concern?

Mr. MALONEY. No, sir.

Mr. DORN. Or that they would all use a specific railroad as opposed to a trucking concern?

Mr. MALONEY. I have never seen any such agreement, sir. I know of none. They are interested, sir, merely in dealing with the problems that arise when these lines are all operating in the same service and that is rate stability, stability of operations, giving the shipper an assurance that he can look forward to continued service in his trade with a stability of rates that he could not otherwise anticipate.

Mr. DORN. Does this apply equally to the man who just has spasmodic shipments or perhaps only one shipment as well as the one who has a general and constant shipper?

For instance, suppose I wanted to ship something now. What rate would apply to me? I have only one article that I want to send.

Mr. MALONEY. Theoretically, sir, I know of no prohibition that would stop you from coming in and taking advantage of this by agreement to ship everything else that you were going to ship on a conference vessel.

Mr. DORN. Practically, would that agreement be offered to me? Would I be informed of it by the conference or by the shipper?

Mr. MALONEY. You are informed through the tariff schedules which are filed, sir. They are all on file.

Mr. DORN. Here is a small man who knows nothing about shipments. He goes and is charged so much, X dollars. Is that X dollars just the lower or the higher rate? Is he informed that if he signs an agreement on form 56-W, that he will be able to get a lower rate even though he is never going to have another shipment?

Mr. MALONEY. Sir, I would prefer, if you will, to have that question directed to people in the steamship companies themselves rather than for me to hazard a guess. I cannot give you an answer of my own knowledge.

I have an idea that almost all of this freight is moved through freight forwarders.

I think it would be highly unusual for you to go down to the dock yourself with a package to ship to Japan or some place. It could be done, but certainly the freight forwarder is thoroughly familiar with this arrangement.

I can probably get the answer in the room for you, but I cannot answer of my own knowledge.

Mr. DORN. Then an integral part of this whole thing would be the freight forwarders?

Mr. MALONEY. I think the freight forwarder is a very integral part of the whole movement.

Mr. DORN. Are they a part of this conference?

Mr. MALONEY. No, sir.

Mr. DORN. Do they join in the setting of any of these rates?

Mr. MALONEY. No, sir.

Mr. DORN. Is there an agreement in the conference not to allow any rebates or kickbacks?

Mr. MALONEY. There is a statute forbidding it, sir. The statute itself forbids rebates.

Mr. DORN. To your knowledge, do any rebates or kickbacks happen despite the statute?

Mr. MALONEY. Not to my knowledge, sir.

Mr. DORN. Then actually the effect of the application of these rates does not depend on the steamship companies themselves. It depends on freight forwarders.

Mr. MALONEY. Sir, if I gave that impression, I did not mean to do so.

The application of these rates depends on whether the shipper falls into the one category or the other, whether he is a contract shipper or not.

Now, how that shipper may be informed of the option which he has—and they all have that option—how he is informed of it, sir, I do not know of my own knowledge.

The dual-rate system is open to all shippers just as the conference is open to all steamship companies. Nobody is foreclosed.

Mr. DORN. But the workings of it really depend not on steamship people but on the freight forwarders.

Mr. MALONEY. I would think that to be the case, sir.

I would appreciate very much if you would verify that or permit me to verify it with the conference and steamship people.

The CHAIRMAN. Mr. Pelly?

Mr. PELLY. Mr. Maloney, as I understand, the preferential rate under the dual-rate system is a matter of public record available to nonconference operators and freight forwarders and there for anyone

who wants to come in and cut that rate, and therefore the element of competition still exists. Is that correct?

Mr. MALONEY. Yes, sir. That is correct, sir.

Mr. PELLY. As I understand you to give your opinion, it would be that if we eliminated the dual-rate system, it actually would result in the eventual breakup of the conferences; is that correct?

Mr. MALONEY. I think it would, sir. Yes, sir.

Mr. PELLY. And were it not for the conferences, would we not have actually rate wars in progress?

Mr. MALONEY. Yes, sir; most certainly so.

As I view it, the conference is, let us say, the weapon used by the the steamship industry throughout the world to provide stability and to prevent ruinous rate wars.

Mr. PELLY. If we did have a rate war in the various trade routes where there are subsidized American lines, the actual cost of that war would come from the Federal Treasury; is that not correct?

Mr. MALONEY. It would to this extent. Let us take one company. If the company was in a recapture position at the time, then the cost of that rate war would come from the Federal Treasury in the sense that the recapturable amount would be absorbed by subsequent losses, but beyond that it would not come from the Treasury because the subsidy would be measured on operating costs and would have no relationship to revenue.

If the rate war cut the revenue, the subsidy would remain static, would remain fixed, or relatively so.

Mr. PELLY. Well, actually under the rate war that affected subsidized lines, a substantial cost would result to the Federal Treasury?

Mr. MALONEY. Yes, sir. It could be substantial.

Mr. PELLY. And in addition, is it not true that if your conference were disbanded, service would suffer and the shippers themselves would eventually suffer?

Mr. MALONEY. I think so, because without the conferences' guaranty of stability of service and regularity of service, the steamship companies are going to dip in and dip out whenever they can take the cream and then when it is just not as good as it was, they will be elsewhere when the shipper needs the service.

Mr. PELLY. In any event, the nonconference tramp or foreign-flag vessel is going to be there in competition to American-flag lines and under the dual system competition exists just as it would exist if the dual system were eliminated. You are always going to have some competition.

Mr. MALONEY. You will always have some competition; yes, sir.

Mr. PELLY. I think that the American people want some form of regulation, first of all, so that the public is protected, and, second, to preserve as much as possible the balance between competitive and non-competitive service.

Mr. MALONEY. Certainly, sir. When competing lines are vying with each other to get the business, there are many elements in this ocean shipping service other than just the cost of the service. There are many elements of the service which mean a great deal to the shipping public.

Mr. PELLY. What is to prevent a conference from building up exorbitant rates? Is there any regulation under the Federal Maritime Board on that?

Mr. MALONEY. The rates must be filed with the Board and the Board has authority to disapprove.

Mr. PELLY. They decide whether it is reasonable or not, so that there is protection for the shippers and the American public?

Mr. MALONEY. Under the act of 1916; yes, sir.

Mr. PELLY. Thank you.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. About what percentage of the American steamship lines are members of these conferences?

Mr. MALONEY. I would say, sir, that it is in excess of 95 percent and very close to 100 percent.

Mr. CURTIN. Would you be in position to say what percentage of the foreign shipping companies are in membership?

Mr. MALONEY. I believe there, too, it is very high, because this industry has learned over many years, and, as a matter of fact, the shipping industry in other countries learned before we did that some such setup was essential to their continued operation.

Mr. CURTIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. Mr. Maloney, going back to your comments on the Frankfurter dissent, is it not true that in the light of that dissent, while the case itself may not apply to other situations, there is a doubt created as to what the present law means which will either be settled by a clear declaration by Congress or which will involve continued litigation as each point arises so that you will not know what the law is until each point has come up and been taken to the Supreme Court? Is that not your problem?

Mr. MALONEY. That is definitely the problem that we face, sir. We do not want, under any circumstances, to await the ultimate determination of all these questions by the Supreme Court. That would take some years as you can imagine. We want within the next 2 years to come in before Congress and have a final determination as to what Congress, in the interests of the entire Nation, wants to do about this problem.

Mr. ALLEN. There was a discussion, I think pursuant to Mr. Dorn's questioning, of the provisions of conference agreements. Is it not true that the conference agreement does not get exemption from the antitrust laws unless the Federal Maritime Board approves its terms?

Mr. MALONEY. That is true, sir.

Mr. ALLEN. Can you tell me whether a conference in any way discriminates in favor of its own members against any new carrier that comes into the field?

Mr. MALONEY. No, sir. The new carrier that comes into the field is automatically eligible for membership in the conference. There is no freezing out. The Isbrandtsen people would be the first to tell you that they could go into the conference if they saw fit.

Mr. ALLEN. Thank you.

The CHAIRMAN. Thank you very much, sir.

Mr. MALONEY. Thank you, Mr. Chairman and members of the committee.

The CHAIRMAN. The next witness is Mr. S. M. McAshan, vice president, American Cotton Shippers Association.

You may be seated, sir.

STATEMENT OF S. M. McASHAN, JR., VICE PRESIDENT, AMERICAN COTTON SHIPPERS ASSOCIATION, ACCOMPANIED BY JOHN C. WHITE, COUNSEL

Mr. McASHAN. My name is S. M. McAshan, Jr., I am vice president of the American Cotton Shippers Association.

The CHAIRMAN. Did you send a wire to the committee?

Mr. McASHAN. Yes, sir, we did.

This is Mr. John C. White, counsel for the American Cotton Shippers Association.

Our association is the national association composed of practically all of the American cotton merchants and exporters. For many years we have consistently supported the conference contract system since we are convinced that it is beneficial to the cotton farmer and to the cotton exporters in that it provides stable rates, dependable service, and generally eliminates the possibility of a few large exporters securing lower freight costs which would not be available to medium and small shippers.

We have met with the conference committee of the steamship lines regularly, sometimes 2 or 3 times a year, to discuss what the rates would be in the different services and have found them very cooperative with our problems in their desire to provide us with fair rates.

I mean by that that the cotton is generally sold from 3 to 6 months forward so that we have to be able to book our freight rates and our sailings ahead of time when we make our contracts and commitments with the European and oriental spinner. They are willing to sit down with us and tell us that they will furnish certain services and certain rates for as much as 12 months ahead.

I believe there is a 60-day clause in these contracts but whenever there are changes necessary they sit down and discuss that with our ocean freight committee and, for example, back during Suez, I believe it was in January of 1957, they asked us for a conference and asked us to raise the rates and obviously the rates that we were paying were on the low side and our committee agreed to an increase in rates but the steamship companies protected the open sales that were on the books at the time so that none of us lost by the change in freight rates on contracts we already had.

Likewise, here recently they reduced the rates a couple of months ago but the reverse was the case. They made the reduction effective immediately so that again we did not suffer from our position that we had.

The stability and regular scheduled sailings are the most important things to our members but, at the same time, we have to be sure that we have a reasonable level of rates in line with what competitive foreign growers of cotton are receiving, and I can assure you that our committee and the members of the steamship conferences have sat down and worked that out.

We have before us what the schedules are from Brazil and Mexico and other countries and nowhere our cotton stands in competition with foreign growths and they see to it that we get fair rates in the services that they provide for us.

I would like to read very briefly some of the resolutions passed by our recent annual conventions of the American Cotton Shippers Association.

For example, in our convention held on April 25 this year:

During the past year there has been a very confused condition in the ocean freight market. Charter rates have been very low and, this has resulted in the necessity of your committee asking the steamship lines to reduce the existing ocean freight rates and we are pleased to say that material reductions have been secured.

On several occasions our association has endorsed the conference contract rate system and we recommend that we reiterate our belief that the system is of great value to the cotton industry as a whole. It is our responsibility to see that United States cotton can be exported at an ocean freight rate that is reasonable in comparison to rates paid by the competitive growths and to rates paid by other commodities. At the same time, the agreed rates must be equitable to the ocean carrier.

That resolution was passed without any opposition whatsoever. There is no use in reading the others but we have had very similar ones for the last 4 or 5 years at our annual conventions.

May I give these to the secretary?

The CHAIRMAN. They may be submitted.

(The document referred to follows:)

REPORT OF THE COMMITTEE ON OCEAN FREIGHT PRESENTED AT THE 34TH ANNUAL CONVENTION OF THE AMERICAN COTTON SHIPPERS ASSOCIATION, MEMPHIS, TENN., APRIL 25-26, 1958.

GENTLEMEN: During the past year there has been a very confused condition in the ocean-freight market. Charter rates have been very low, and this has resulted in the necessity of your committee asking the steamship lines to reduce the existing ocean-freight rates, and we are pleased to say that material reductions have been secured.

On several occasions our association has endorsed the conference contract rate system, and we recommend that we reiterate our belief that the system is of great value to the cotton industry as a whole. It is our responsibility to see that United States cotton can be exported at an ocean-freight rate that is reasonable in comparison to rates paid by the competitive growths and to rates paid by other commodities. At the same time, the agreed rates must be equitable to the ocean carrier.

RATES TO EUROPE

At a meeting of our committee with the steamship representatives held in New Orleans, January 24, 1958, the steamship companies agreed to our request for a reduction of 25 points in the rate to the various European ports. The new rates were made effective at once and extended through December 31, 1958. Yesterday, April 24, we had another meeting, at which time it was agreed that the present rates would be extended through July 31, 1959. Realizing that very uncertain conditions exist throughout the world, it was definitely confirmed that the present rates are subject to review at any time on the request of any party to the agreements.

FAR EAST RATES

At the meeting in New Orleans on January 24, 1958, we were unfortunate in not having the Gulf-Far East Conference officially represented. After the steamship lines agreed to make a reduction in the rates to Europe, we immediately asked the Far East Conference for a 25-cent reduction in the rates from the gulf to the Far East, but we were never able to get them to act. We are glad to be able to report that in our meeting with them yesterday, April 24, they agreed to reduce the rates 25 points from the gulf to all Far East destinations. These reductions are to be made effective today, April 25, 1958, and are effective through July 31, 1959. A similar reduction will be made from Pacific ports to the Far East, effective April 25.

We recommend that the American Cotton Shippers Association go on record as opposing the unilateral action of the Pacific Coast-European Conference in interpreting the shippers' rate agreement to include f. o. b. and f. a. s. shipments. Notice of this opposition should be transmitted to the Pacific Coast-European Conference and the Federal Maritime Board.

The negotiations of this committee with the steamship lines successfully included discussion of rates from the west coast to the Far East. We recommend this practice be continued in the future by the American Cotton Shippers Association ocean-freight committee and be broadened to include rates and practices of the Pacific Coast-European Conference.

There was some discussion of the rates from South Atlantic ports to Europe, but the committee did not have sufficient information to act. We recommend that the incoming administration give this subject due study.

We recommend that the association endorse the present system under which the steamship companies pay a fixed rate to the forwarding agents. We do not have sufficient information to approve or oppose the pending legislation in Washington, but we do consider it to be absolutely necessary that the freight brokers continue to be paid a brokerage by the steamship companies.

Our steamship friends are complaining about the condition of the American bale, and state that on account of its poor condition they are having to pay many claims which should be avoided.

Our committee wishes to express its gratitude for the efforts of Mr. H. J. Blydenstein B. J., Zn, of Enschede, Holland, for his most valuable assistance in our negotiations with the steamship representatives. He has attended both meetings of our committee during the year as a representative of the International Federation of Master Cotton Spinners, and the spinners of Holland, Belgium, and Germany, and his advice and cooperation has been of very great value.

Respectfully submitted.

J. M. Locke, chairman; S. M. McAshan, Jr., T. M. Perkins, R. M. Dixon, David Maybank, Caffey Robertson, Hubert F. Fisher, Jr., Kurt Muller, Rudi Scheidt, J. E. Gould, A. Owen.

Mr. McASHAN. Thank you. Just here yesterday the chairman of the American Cotton Shippers ocean-freight committee has sent out a letter to all of our members. I would like to read one sentence from it.

Your ocean-freight committee recommends that all members continue booking all freight with conference lines as they have been doing, and give the conference lines a chance to work out any necessary alterations, if any are necessary, to comply with the Supreme Court decision.

The conference lines have offered to meet with your ocean-freight committee, which meeting certainly will take place with full discussion of the problem before anything is done to upset the present system.

We urge your support of H. R. 12751.

The CHAIRMAN. You met right after the Supreme Court handed down this decision?

Mr. McASHAN. Our meeting was the weekend before. We did not know about it.

The CHAIRMAN. Did you read something there about that?

Mr. McASHAN. This letter was sent out yesterday. Mr. White asked me to point out the volume of American cotton being handled in the export trade. It was $7\frac{1}{2}$ million bales, or nearly 2 million tons of freight, the year before last, and in the year we are in now it will be about $5\frac{1}{2}$ billion bales, or about a million and a half tons of freight.

The CHAIRMAN. How much of it went in nonconference bottoms?

Mr. McASHAN. I could not answer that, sir, but I would say less than 1 percent.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. Mr. McAshan, does your organization have any connection with any carrier or ownership in any carriers?

Mr. McASHAN. The American Cotton Association does not.

Mr. ALLEN. You represent purely the viewpoint of a shipper using the carriers?

Mr. McASHAN. Yes, sir.

Mr. ALLEN. Did you have any experience, that you know about, shipping before conference conditions existed?

Mr. McASHAN. That was before my time, when much of it was done back in the thirties, and I was a country cotton buyer, and I am afraid I had better not try to answer that.

Mr. ALLEN. As I understand it, the interstate commerce law provides that the railroads must publish their tariff rates and, thereafter, it is illegal to charge any shipper, large or small, any rate except the published rate, so that a small shipper gets the same treatment as a large shipper and vice versa. Is that true; do you know?

Mr. McASHAN. Did you say railroads, or steamship lines?

Mr. ALLEN. Railroads.

Mr. McASHAN. Yes, sir; that is correct.

Mr. ALLEN. Now, in effect, does the conference system agree on and publish tariff rates that does the same thing for the large and small ocean shippers?

Mr. McASHAN. Yes, sir. That is correct. It does.

Mr. ALLEN. And it is, in a way, an international agreement, but must be approved by our regulatory board before it is legal to operate in this country?

Mr. McASHAN. I do not know about that.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Did I gather from you that a shipper of cotton from the interior to a port would know in advance just what the rail rate is and would know in advance just what the ocean rate would be?

Mr. McASHAN. Yes, sir. He has to offer his cotton c. i. f. European ports.

The CHAIRMAN. Those rates are published and are available to all shippers alike?

Mr. McASHAN. Yes, sir. That is correct.

The CHAIRMAN. What brought about the situation where you asked for a reduction in your rate just recently, about which you spoke?

Mr. McASHAN. Well, generally speaking, the shippers heard that charter rates were down, they heard that Isbrandtsen and one other steamship company, a foreign-flag line—I do not remember who it was—was offering special rates for large quantities for substantial shipment of several thousand bales at a time at 15 percent under the conference rates. That was the reason for our discussion.

The CHAIRMAN. That was just a special offer by these nonconference people?

Mr. McASHAN. Yes, sir.

The CHAIRMAN. It was not an offer to extend over a long period of time?

Mr. McASHAN. No, sir. It was for sizable lots and was not every 15 days, the first half and end of the month sailing at all. It was special berthings.

The CHAIRMAN. Could you get any assurance from the nonconference operator that that rate would hold and would be a published rate?

Mr. McASHAN. Only for one shipment at a time.

The CHAIRMAN. Yes, sir.

Mr. Van Pelt?

Mr. VAN PELT. I have no questions.

The CHAIRMAN. Mr. Ray?

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. I have no questions.

The CHAIRMAN. Mr. Pelly?

Mr. PELLY. I have one question.

Could you give me an idea of how much percentage saving there is for shipping cotton under the dual system with the preference given under contract? In other words, you just mentioned 15 percent.

Mr. McASHAN. We figure that it is worth something to us to have the regularity of scheduled sailings and the ability to book our freight in advance. I do not know whether we pay 10 percent more than we could get if we went out and tried to get together and charter a boat. I do not know what that would be.

Mr. PELLY. I did not make myself clear. I meant to ask how much cheaper the lower rates under exclusive contract was than the regular published tariff.

Mr. McASHAN. I believe that difference is 15 percent.

Mr. PELLY. Thank you. That is all.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Mr. McAshan, is all of your cotton presently exported on conference lines?

Mr. McASHAN. All except shipment by two shippers. Two of our members are not members of the conference lines that I know of.

Mr. GLENN. Do they take advantage of this reduced rate that was specially offered?

Mr. McASHAN. Sometimes they do. Sometimes they ship with the conference lines, too.

Mr. GLENN. That is all, Mr. Chairman.

The CHAIRMAN. Do you have any further statements?

Mr. McASHAN. No, sir.

The CHAIRMAN. Thank you.

Mr. McASHAN. Thank you, sir.

(John C. White, letter, June 4, 1958, re testimony follows:)

AMERICAN COTTON SHIPPERS ASSOCIATION,
Washington, D. C., June 4, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee,
Washington, D. C.

DEAR MR. CHAIRMAN: After the testimony of Mr. S. M. McAshan, Jr., vice president of the American Cotton Shippers Association, that the association was virtually unanimous in its approval of the conference dual rate system and favored enactment of H. R. 12751, I was informed that a witness for the Isbrandtsen Line asserted that Mr. McAshan was speaking for Anderson, Clayton & Co. of which he is vice president, and which owns some interest in some States Marine vessels.

While it is obvious from the committee reports offered for the record that the position stated represents the views of the association, I wish to confirm this expressly for the record. The reports endorsing the contract rate system have been approved in annual conventions over the years without dissenting vote. The question whether testimony should be presented favoring an amendment permitting its continuance was passed upon by the ocean freight committee of the association, and the president's special advisory committee, of which five immediate past presidents of the association are members, advised that it was the responsibility of the officers of the association to see that position was presented. It was only because the president, Mr. Adolph Weil, Jr., was in Europe

that it became the duty of Vice President McAshan to testify before your committee.

The record will show that he testified only for the American Cotton Shippers Association. The American Cotton Shippers Association represents only cotton shippers and it, as he stated, has no interests in shipping lines—except as shippers. It is apparent that a large exporter such as Anderson, Clayton & Co., is able because of its volume of shipments to protect itself whether or not the contract rate system is permitted, but the association position is dictated by the interests of the many small- and medium-sized exporters who can only be hurt by an unstable and discriminatory ocean rate system.

It is requested that this letter, together with the ocean freight committee reports, be made part of the printed record.

Respectfully yours,

JOHN C. WHITE.

The CHAIRMAN. Mr. Donald F. Wierda, United States Lines Co.
You may proceed, sir.

**STATEMENT OF DONALD F. WIERDA, GENERAL FREIGHT TRAFFIC
MANAGER, UNITED STATES LINES CO.**

Mr. WIERDA. My name is Donald F. Wierda. I am the general freight traffic manager of the United States Lines Co., 1 Broadway, New York City.

The United States Lines operates 55 cargo vessels and 2 passenger vessels on 7 trade routes declared essential by the Federal Maritime Board. All of these vessels are under the American flag, and we are subsidized on each of these trade routes.

Thirty-two of our vessels operate between North Atlantic ports (from Maine to Virginia inclusive) and Germany, Belgium, Holland, France, the United Kingdom, and the Atlantic coast of Spain. Six of our vessels operate between ports from North Carolina south to Florida and the same areas in Europe and also occasionally serve Scandinavian ports. Nine vessels are employed between the Atlantic coast of the United States and the Far East and eight vessels operate between the Atlantic and gulf coasts of the United States and Australia and New Zealand.

In all of the trades in which we operate, the United States Lines is a member of the conference, if one exists, and in many of these conferences a dual rate contract system has been in existence for many years. This system has proved to be a satisfactory and effective method of meeting the needs of both the steamship operators and the shipping public. The steamship companies have some knowledge that the shipping public will support their services and some assurance that investment of tens of millions of dollars for new ships and the maintenance of a service will prove to be a profitable business venture.

Shippers and importers in the United States need to know that they will have shipping services when they need them and what their costs are going to be for that service.

An example would be that a shipper today would be negotiating to sell some product in, say, Europe, in August of this year. This is the first of June. He must be assured that he will have a ship available and what the cost will be in order that he can put in his bid for that business.

He must also be assured that his competitors will pay the same cost.

Naturally, this person negotiating to sell cargo abroad wants to be certain that his competitors will also be faced with the same steamship

costs as he himself will be. No shipper or importer can plan his business on a long-range basis if his shipping costs fluctuate violently from day to day, but these fluctuations are exactly what will happen as a result of this Supreme Court decision, in our opinion. The contract system has achieved this much-needed stability in the rates charged for freight services in all the areas to which we operate. Conferences are in close touch with the problems of shippers and importers and freight rates are established to enable both the shipper and the steamship company to make a fair return on their capital invested.

I think an excellent example of that was given by the previous witness.

It should be emphasized at this point that neither the conference system nor the contract system operates to the detriment of an American shipper or importer. Rates are established on a reasonable level to enable the shipper to do business, for if the shipper cannot sell his goods, the shipping company cannot operate its vessels.

Rates alone, however, are not the only stability required by an American exporter or importer. He must be assured that the product he buys or sells will be shipped quickly, efficiently and responsibly by a company he can respect and trust. Fast and frequent service is essential and the assurance of support received by the steamship company makes this possible.

The present decision of the Supreme Court which has nullified a practice engaged in by many conferences all over the world will have a profound and adverse effect on the United States Lines and, we feel, on the American merchant marine as a whole. There is little use in lines agreeing on the terms and conditions of competition among themselves under a conference agreement if they are to be without any defense whatsoever against numerous nonconference cut-rate lines operating in that same trade without any obligation to each other or to the shipping public.

This decision has stripped the conferences of the only means they have to protect themselves against the predatory and irresponsible actions of nonconference operators. If this should be permitted to continue we anticipate the complete breakdown of the conference system which has proved an effective means of regulating competition in this important international industry.

The inevitable result will be a wild scramble on the part of the steamship operators of all flags to protect their position in the trade with the return of vicious rate-cutting and other destructive practices. This can only have a very serious effect on American steamship operators and the tens of thousands of people in the United States whose livelihood comes from our industry.

We feel that conferences and contract systems or some other devices along the same lines are essential to regularize the competition among the lines, both American flag and foreign flag, and to prevent so far as possible indiscriminate rate-cutting practices.

In certain of our own trades where the dual-rate system is in effect today, we have found that the number of nonconference operators has increased in spite of the dual-rate contract system and we do not believe that it can be said that the dual-rate system in every instance is designed to stifle or eliminate nonconference competition. In fact, some conferences are taking the position that their dual-rate contract systems are legal. Nevertheless, the present Supreme Court deci-

sion has created great confusion in the minds of shippers and importers not only in the United States but in other parts of the world as well. This decision may dictate a radical change in the method by which they have been doing business over several decades and they are very concerned.

We have received numerous letters and innumerable telephone calls from both shippers and importers as well as from our customers abroad who are confused with this present state of affairs. These people are anxious to plan their future business with the full knowledge of the freight rates to be charged to them as well as to their competitors and to clarify that situation we urgently request favorable consideration of this proposed bill.

In conclusion, the United States Lines is firmly convinced that the conference system and the dual-rate system are beneficial to the shipper, importer, operator, the American merchant marine and the foreign commerce of the United States.

We also believe that the Supreme Court decision has placed the conference system in serious jeopardy and that this bill should be passed immediately to alleviate further confusion and to prevent further serious deterioration of our shipping relations. This will also enable Congress to work out permanent legislation on this important matter.

The CHAIRMAN. Mr. Wierda, on the first page, where you say—

In all of the trades in which we operate, the United States Lines is a member of the conference, if one exists, and in many of these conferences a dual-rate contract system has been in existence for many years.

you evidently mean that there are conferences that do not practice the dual-rate system?

Mr. WIERDA. There are some conferences of which we are a member which do not have any contract system at all at the present time.

The CHAIRMAN. How, then, do you predict the rates in that conference where you do not have the system?

Mr. WIERDA. We have simply one rate in that conference which is applicable to all shippers because there is no lower rate in return for a contract.

The CHAIRMAN. Are those rates published for any length of time?

Mr. WIERDA. Yes, sir. Various conferences differ as to the rules and regulations in each of the trades but normally a minimum of 2 to 3 months is guaranteed for that rate before any increase. In other words, in most of the conferences in which we are a member our rates are valid as of June 3, today, through the end of August. That is a guaranty against any increase in the rates. If it is necessary to decrease any rate those decreases are made effective immediately.

The CHAIRMAN. If I may ask, will you point out the conference and the rate of the conference that does not have the dual-rate contract system?

Mr. WIERDA. The Continental North Atlantic Westbound Freight Conference from Europe. The Antwerp Hamburg Range area in Europe to the North Atlantic ports of the United States.

A contract system has been discussed and is prepared but has not been placed before the Federal Maritime Board for approval pending the outcome of the litigation which has taken place over the last several years.

The CHAIRMAN. You mean that at the time of this decision there was in discussion establishment of a dual-rate system in that conference?

Mr. WIERDA. Yes, sir.

The CHAIRMAN. What has been the experience in the conference without the dual-rate system?

Mr. WIERDA. Well, all of the rates in a noncontract area are fixed by the conferences in exactly the same manner as in a contract area but our experience on this homebound trade has been such that we have been wanting very badly to put a contract system into effect, but the conference has withheld action in putting that contract system before the Federal Maritime Board pending the outcome of this entire litigation.

We would much prefer to have a contract system in that trade and if it were possible to get one we would certainly do it.

The CHAIRMAN. How long could we say has the subject of a dual-rate contract system been in discussion prior to this matter coming to the court?

Mr. WIERDA. Well, the same trade outbound from the United States has the dual-rate system and has been a subject of litigation as well over many years. I do not recall the exact date when that litigation was started.

The CHAIRMAN. What do you mean by many years?

Mr. WIERDA. Well, I believe as early as before 1950, but I would prefer to check that date.

The CHAIRMAN. You mean that your dual-rate system to the Continent has been in litigation since 1950?

Mr. WIERDA. Well, it has been a subject of litigation and discussion and Federal Maritime Board hearings, and so on, since at least that date, and it was finally placed into effect about 2 years ago after full Federal Maritime Board approval.

The CHAIRMAN. When they placed the outbound one into effect, why did it not include the inbound?

Mr. WIERDA. There are different members outbound and inbound. It was decided by those who are members of both conferences that it was better to withhold action on the inbound because it took so long to get the inbound one in and we felt that with the decision we would know where we stood.

The CHAIRMAN. Have the inbound rates fluctuated up and down from time to time?

Mr. WIERDA. We have had to use many devices in order to meet the nonconference competition.

The CHAIRMAN. Is that from one sailing to another?

Mr. WIERDA. Not so violently as that, sir.

The CHAIRMAN. From one month to another?

Mr. WIERDA. Yes, sir.

The CHAIRMAN. So that the shipper could not anticipate what the cost of the freight would be on inbound cargo?

Mr. WIERDA. He would be able to discover or find out what the maximum rate would be but there may be violent fluctuations during that period when he is planning his shipment where the rate would go down.

The CHAIRMAN. What caused the fluctuation?

Mr. WIERDA. This is caused by a large number of nonconference operators getting on the berth all at the same time and attempting to book cargo at much lower rates.

The CHAIRMAN. Are they some operators that moved in from another area?

Mr. WIERDA. Yes; some of them. Others have just sprung up.

The CHAIRMAN. They would be what you call fly-by-nights?

Mr. WIERDA. Yes, sir. We have that same case today in our North Atlantic trade with several nonconference lines.

The CHAIRMAN. Who are they?

Mr. WIERDA. One is called the Nautica Line. Another is the Mamenic Lines of Nicaraguan origin. Wallenius is one, a Scandinavian line. We have had experience especially with Nautica before. He starts up in a period of depression in the steamship industry where charter rates are very low. He has no investment whatsoever in the business. He goes out and charters a ship for 2 months, or 3 months, or 1 trip or something like that, at very low rates and then goes around to all of our supporters, all the people who have been shipping cargo and will take cargo at almost any rate.

The CHAIRMAN. Are there any American-flag operators that move in and out?

Mr. WIERDA. No, sir; not American-flag operators.

The CHAIRMAN. There are none who move in and out of that?

Mr. WIERDA. No, sir. We have had no experience with American-flag operators.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. Mr. Chairman.

I notice, Mr. Wierda, that on the last page you mention shippers, importers, operators. Do freight forwarders get any benefit out of this conference system? I have in mind Mr. Dorn's question as to what a man who had one or two small shipments would get by way of rates.

Mr. WIERDA. Well, the man with one small shipment would be told by the steamship company and, naturally, by his freight forwarder. He would need to employ someone to assist him in preparing this shipment for movement. He needs certain customs documents and so on, which are required, and as a necessity an expert freight forwarder, of course, is the best man to employ.

If we get an inquiry from a man who says, "I have one package which I want to ship," we always give him the two rates. You have a noncontract rate and a contract rate. We always suggest that he sign the contract to get the benefit of the lower rate even though it is only one shipment, and naturally they take advantage of that.

Mr. ALLEN. What would it cost to ship a ton or two to Europe on the freight rate?

Mr. WIERDA. A ton or two of what?

Mr. ALLEN. Some very high-class cargo.

Mr. WIERDA. Each commodity has its individual freight rate.

Mr. ALLEN. Take any one.

Mr. WIERDA. It might cost \$20 a ton, say.

Mr. ALLEN. And the differential would be 10 percent?

Mr. WIERDA. Approximately 10 percent.

Mr. ALLEN. So that it would be a \$2 item for that man.

Mr. WIERDA. Yes, sir. That is right.

Mr. ALLEN. I was noticing the language of H. R. 12751 particularly with reference, in lines 6 and 7, I believe it is, where the application is made to—

any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment.

Having in mind that the Supreme Court case may have done something to at least one conference agreement, in your opinion is this bill intended to keep that particular agreement as well as all others in effect?

Mr. WIERDA. That would be my interpretation of it, sir, yes. Actually you used the words "in use." I believe that Japan-Atlantic contract system is not in use as such. There has been an injunction against the use of that system pending the outcome of this Supreme Court case so that the Japan-Atlantic, the way I read this, "in use" would not be subject to this law.

Mr. ALLEN. One other question, Mr. Wierda. How do conferences discipline members who fail to abide by the conference rule or agreement?

Mr. WIERDA. Well, each conference, of course, has its method under the basic conference agreement as such.

If there is any deviation from the conference agreement some conferences appoint a committee of the lines, say of three lines, to investigate the complaint. The complaining member and the member complained against, of course, cannot be a member of that committee.

Some conferences require that the steamship companies open their books to answer questions. All of their personnel whether on the pier or in the offices or on the ships, are required to answer questions and give full cooperation to this committee, and then the committee, after its investigation, hands down its decision which is acted upon by the conference as a whole.

In many conferences to safeguard the position a bond is required on the part of each steamship company and, if proof has been given that they have violated the agreement, either the whole or part of that bond will be forfeited for the benefit of the conference as a whole.

Mr. ALLEN. Can a shipper file a complaint?

Mr. WIERDA. Yes, sir.

Mr. ALLEN. And would the same action follow on the complaint of a shipper as from another member of the conference?

Mr. WIERDA. Absolutely, sir, yes.

Mr. ALLEN. Thank you.

The CHAIRMAN. Mr. Boykin?

Mr. BOYKIN. How do the people down on the gulf, such as the Alcoa, Lykes Bros., and Waterman Steamship Co. feel about this bill?

Mr. WIERDA. I believe some of these people will testify but it is my understanding that they are 100 percent behind this bill, sir.

Mr. BOYKIN. So am I. Your statement was very good. I do not see how we can compete if we do not look out for our people.

Do you think Mr. Bonner's bill will take care of this situation?

Mr. WIERDA. Yes, sir. We believe that it will.

Mr. BOYKIN. I am for it 1 million percent.

Mr. WIERDA. I am delighted to hear it, sir.

Mr. BOYKIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Pelt?

Mr. VAN PELT. I have no questions.

The CHAIRMAN. Mr. Ray?

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Mailliard, do you have any questions?

Mr. MAILLAIRD. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Dorn?

Mr. DORN. I am still interested and I cannot seem to fully understand why it is a dual and not a one rate system. I wonder if you would explain it just a little bit.

Mr. WIERDA. Yes.

The United States Lines, for example, is a company that is in business in certain trade routes and we fully intend to stay in business over a long period of time. We do outfit and invest millions of dollars in ships. We have an organization in the United States and an organization in Europe and the Far East.

We rent or take over expensive piers. We invested a lot of money, in other words, to go into this business.

Now, in the normal course of events, we must have some assurance before that investment is made that we are going to be successful.

In the conference systems as a whole, we have found that the conference system is a means for the lines to discuss among themselves their problems and to regulate the methods by which they will compete with one another.

The Nautica Line, as I mentioned earlier to the chairman is a line which has come in suddenly in a very low charter market such as today. They do not, in our opinion, have any intention of staying in this business. They have absolutely no investment in ships to our knowledge. They have no investment in organization or piers, et cetera, whereas we do have that investment. If we did not have a dual-rate contract system this Nautica Line could come in, willy-nilly, quoting any rates they might wish to quote, and take our supporters and solicit our supporters for their business, whereas in the next year perhaps, or 6 or 3 months from now, this Nautica Line may not even be there. So that, in order to insure and to protect ourselves against these fly-by-night operators, cutthroat operators, you might even term them, we feel that the dual-rate contract system which protects the shipper by our guaranty of service, our frequent sailings and our guaranty of the rate for the period of time also in return protects the shipping company against these cutthroat operators who have no intention of ever staying in the business for an extended period.

Mr. DORN. Suppose that this line that you mentioned goes to get any number of customers to sail along the route. How do you check whether some of your customers who have the preferred rate have shipped with them?

Mr. WIERDA. Well, we have certain information which is available to all steamship companies and shippers. There are publications which come out. Naturally, our own offices in Europe or the Far East or Australia are alert to these things and we get information from every conceivable source. We do not, of course, catch them all. That is quite understandable.

We cannot be perfect in these things, but we do get information and continuous information as to what our contract shipper might be doing in that respect.

Mr. DORN. Who would be the ones who would send their goods with this 10-percent increase in rates?

Mr. WIERDA. Usually shippers or importers who do not require such regular service as the conference lines give in return for a contract, people who might ship casually, who take advantage, for instance, of a small change in the market.

Let us take metal scrap of some kind. An alteration in the American price of copper scrap, for example, will cause people on the other side to say, "We can make 2 cents a pound more over in the United States," and they might make 3 or 4 casual shipments to take advantage of that differential.

When that differential is straightened out again they are out of business and do not ship any more.

Mr. DORN. That is what I am getting at. There is no reason for them to pay 10 percent more. All they need to do is sign up with you folks?

Mr. WIERDA. That is correct; yes, sir.

Mr. DORN. All that I can see here is that the casual shipper is discriminated against.

Mr. WIERDA. Not in any way, sir. There is absolutely no discrimination against a casual or regular shipper. The contract is available to all shippers, casual or otherwise.

Mr. DORN. You are just telling me that the casual shipper is not availing himself of the contract. It would be obvious that he does not know about it.

Mr. WIERDA. No, sir. I was trying to give an answer to your question as to who would ship by these casual fly-by-nights, but we do have a lot of casual shippers, people who might ship only 2 or 3 times a year who are also contract signers, a person who may ship only once: sending a sample, for example, who has a piece of machinery and thinks it is pretty good and sends it to Germany to see if he can sell it.

Mr. DORN. Would it be easy or overly difficult to get a list, let us say, of the folks who paid the increased 10 percent in shipping in your line during the past month?

Mr. WIERDA. We have that available, yes, sir. We would have to dig it out but we could do that, sir.

Mr. DORN. Would it be an expensive operation to dig it out or would it be an operation that would not cost very much?

I would like to see a list of the casual shippers or the shippers who paid an increased 10 percent.

Mr. WIERDA. Well, sir, if we could confine it to, say, one trade in the last month we could do it. We sail 22 or 23 ships and would have to look through the manifests of all vessels. If we could confine it to one vessel, I would be glad to have it done.

Mr. DORN. I would appreciate it if it would be easy and inexpensive to do.

Mr. WIERDA. I would be glad to do it.

(The information referred to follows:)

UNITED STATES LINES,
New York, June 11, 1958.

HON. HERBERT C. BONNER,
*Chairman, Committee of Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.*

DEAR SIR: At recent hearings conducted by your committee into the interim legislation on the dual rate contract system I was requested by Representative Dorn of New York to furnish additional information as to the number of shipments effected on our vessels and rated on the noncontract basis.

We have checked the manifests of all nine vessels sailing on our service to the east coast of the United Kingdom and to France (trade routes No. 5 and No. 9) for the month of May 1958. We feel this would be representative of our experience over approximately 100 sailings which we would effect on these services during the entire year. Our investigation reveals that 2.7 percent of the commercial bills of lading issued on these vessels were rated at the noncontract rate.

In addition our rate clerks who compute the freight charges on each individual bill of lading are under instructions to rubber stamp each bill of lading rated on the noncontract basis drawing the attention of the shipper and receiver that lower rates are available if a contract is signed. This rubber stamp reads:

"This bill of lading has been rated at noncontract rates because the conference has no record that you have signed a freighting agreement. Contract rates effecting material saving can be secured by signing a contract immediately with the conference.

"Apply to C. R. Andrews, Conference Chairman, 80 Broad Street, New York 4, N. Y. for forms."

I trust that the information contained herein meets the requirements of your committee, but we should be pleased to be of further assistance if possible.

Respectfully,

D. F. WIERDA,
General freight traffic manager.

Mr. PELLY. Are you bothered by foreign-flag members of the conferences having secret rebates?

Mr. WIERDA. We hear rumors and people contend that all sorts of things are going on, but we have been unable to find any definite evidence of all these alleged rebates, and so on.

Mr. PELLY. You mentioned that in certain conferences of which you are a member, the dual system is not presently practiced.

Mr. WIERDA. Yes, sir.

Mr. PELLY. What actually has been the net effect where there was no dual system in those particular conferences?

Mr. WIERDA. In certain of the trades in which we operate the amount of competition is not very great so that it would not be a fair example.

The one major trade in which we do operate is the Antwerp-Hamburg range in Europe homebound to the North Atlantic ports of the United States. In that trade today are a very large number of lines, I think about 22 lines.

We finally get to the point where we have more than a sailing a day sometimes to that area homebound and there are a very large number of nonconference cut-rate operators in that trade homebound.

As a result, because we do not have the defense of this dual-rate system and it was decided as a matter of policy by the conference not to attempt to put it in while all this discussion and litigation was going on here at that time, the conference has had to adopt all sorts of systems in an attempt to protect itself, but in none of those systems has it been of benefit ratewise. In every single one of them it is an attempt to meet this nonconference cut-rate operation by special

committees and by lowering of the rate, meeting the terms and conditions.

You have to stay in the trade and, in order to get the cargo you have to sometimes meet even the most ridiculous offers of these nonconference operators.

Mr. PELLY. In other words, where you do not have the dual-rate system you have more or less chaos and a nonprofitable operation.

Mr. WIERDA. Yes, sir. That is basically true.

Mr. PELLY. If you have that situation universally or both to and from that particular situation you would soon cut down the number of sailings and have either the conference break up or the shipper himself would suffer.

Mr. WIERDA. That is correct. There is no question of that, sir, in my mind.

Mr. PELLY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Do your contracts for confirmation rates with shippers provide that they send all their material on your lines?

Mr. WIERDA. Yes, sir, on the conference lines.

Mr. CURTIN. Assuming that you found out that some shipper is sending a part of his merchandise with a nonconference line, what do you do then?

Mr. WIERDA. Well, each conference differs a little bit.

We are members of several conferences. Each conference differs a little bit in its method of handling this matter but the normal method is for the conference chairman to write to the shipper in question and say that "It has come to our attention that a shipment of marbles went forward on a nonconference vessel and we have on file a contract signed by you and would appreciate your advice as to whether this shipment did take place, because it would appear to be in violation of the contract."

If the shipper comes back and says, "Yes, I did make that shipment," many times he might say, "There was a new clerk in the office and he made a mistake. He did not mean to do it and we hope you will forgive it," or he will come out, though rarely, and say, "I don't want any further contract shipments with you"; but that very seldom happens.

Normally, the situation is that he was put in a position by either an error or something of that kind, and as a result the conference, of course, says, "Please don't do it again," and everything continues as it was before.

Mr. CURTIN. Let us assume he says, "I do not want any more contract shipments." Is there then a money penalty that you assess against him or do you refuse to carry his material on any of your lines?

Mr. WIERDA. We just notify all the steamship operators who are members of that conference that this contract is no longer in existence and therefore any shipments by this particular shipper in the future will take the noncontract rate.

Mr. CURTIN. Let us assume here that one of these nonconference lines is undercutting you by 10 or 15 percent. Do you do anything about that? Do you go to that steamship line and say, "Try to come

up to our rate," or do you reduce your rate to try to meet it? Just what do you do in those circumstances?

Mr. WIERDA. Well, we naturally try everything that we possibly can to retain that business. It may be that the nonconference operator's ship is out of position and it may be that he goes to the wrong side of the river in New York, for example. He might have an additional trucking cost to get his cargo where he wants it because the shipper is in the wrong part of the city or in the port. We naturally discuss it with the shipper and with the receiver. We try to get the receiver to stipulate and say that the United States Lines for that movement in spite of the fact that the other person may want to ship it nonconference. We take every possible action we can take to retain that business. If it is necessary, in the long run, we may have to adjust the freight rate on that commodity in order to keep the business.

Mr. CURTIN. Do members of your conference try to put any pressure on that nonconference steamship line?

Mr. WIERDA. There is no way we can really put any pressure on him. He is a free agent. He can do anything he wants. He can come in and out. I do not know of any way we could put pressure on him.

The CHAIRMAN. Thank you very much.

Mr. WIERDA. Thank you, sir.

The CHAIRMAN. The next witness is the Honorable John J. O'Connor, former Member of Congress, representing the Isbrandtsen Lines.

**STATEMENT OF HON. JOHN J. O'CONNOR, ISBRANDTSEN LINES,
ACCOMPANIED BY RICHARD W. KURRUS**

Mr. O'CONNOR. Mr. Chairman and members of the committee, I not only represent the Isbrandtsen Lines but I happen to have lived with this subject for at least 12 years and incidentally I argued in the Supreme Court this case and with the Department of Justice and the Department of Agriculture was successful in having the decision rendered as it was.

I did not intend to appear before the committee at this stage of these hearings originally because I intend to produce some witnesses later on. There will be a number of witnesses here, I am quite sure, from what I hear, but I am glad I came here at this time to meet some of the confusion that has arisen already.

It is apparent, especially from the questions asked by the distinguished members of this committee, that they have been fed certain information and especially some blackguarding of Isbrandtsen, which is without foundation. Let us start out, gentlemen.

The CHAIRMAN. I do not know as to whether I have heard any blackguarding here.

Mr. O'CONNOR. About using foreign lines, and so forth, and rate cutting.

Let us start out with the premise that Isbrandtsen is an American company owned and controlled entirely by American citizens, employing American employees, most of whom are veterans of our World Wars. But let us see who is interested in this subject.

The first attack on this dual rate system, which is an Old World device to monopolize and is as nonindigenous to our country as anything could be, was made by the Department of Justice way back

in 1948, and since that date the Department of Justice and the Department of Agriculture have been in every proceeding attacking the use of this system, and practically all the farm organizations have testified against this system.

At times, the Department of Commerce also opposed this system.

Now, this opposition is not the imaginations of Isbrandtsen. It is the unanimous effort of the Government agencies.

The CHAIRMAN. Let me interrupt you. I want to listen and I am sure that the other members do also.

You say the Department of Agriculture. Was that on the 50-50 bill?

Mr. O'CONNOR. No, the 50-50 bill has nothing to do with this.

The CHAIRMAN. That is the only time that I know that the Department of Agriculture has ever expressed any interest before this committee.

Mr. O'CONNOR. You have never had this subject before your committee before today. Anything I say now I say with due respect.

What you are proposing to do now is a most extraordinary thing. You are proposing to legislate a moratorium against the effective date of a decision of our Supreme Court.

The CHAIRMAN. Well, they have made some curious decisions. I, as a layman, have read some of their decisions and they have been curious.

Mr. O'CONNOR. I am surprised that that device, may I call it, was not suggested in connection with the education integration.

The CHAIRMAN. You read the press about some of their decisions, I am sure.

Mr. O'CONNOR. I read them. I have been before the court several times.

The CHAIRMAN. Let us go ahead.

Mr. O'CONNOR. I say it is a most extraordinary thing and the reasons for it are entirely unjustified, because there is no surprise in this court holding, at all. For 7 years at least these conferences which have been using the dual rate system have been advised that this day of reckoning was coming, and all they have been doing is trying to postpone that day. In the meantime, for years, they have prepared legislation to meet this day so that my talk about unexpected chaos or catastrophe is just beside the question.

There are 130 conferences operating in our 32 trade routes, American conferences, to which about 400 foreign lines belong and 40 American lines, and in less than one half of those conferences this system is used.

Now, they say if you cannot use the dual-rate system the conference system collapses.

Of course, there is no foundation for that, and the confusion that is purposely built up through all these years in all the cases we have been in, has confused the conference system with the dual-rate system and they have no connection, because more than one-half of the conferences have been getting along handsomely without the dual-rate system.

Furthermore, in less than 10 trades in and out of the United States is there an independent operator. These witnesses here have not been confronted with independent operators except the last witness for the United States Lines, and he has a number of independent op-

erators northbound from the North Atlantic to Europe. The Agriculture Department itself brought the action against the further use of the systems in that trade and when the Board decided to permit the use of the system, the Agriculture Department and Justice Department and Isbrandtsen appealed to the United States District Court of Appeals here in the District, and that case is still pending there, to abide the decision of this Supreme Court case which dealt with the situation in the Pacific, the Japan-Atlantic Conference. The 1916 act provided a conference system. Gentlemen, if you approach this subject keeping separate the conference system from the dual-range system, which is just a practice adopted some years after the 1916 act, you will see no need for this impetuous legislation to meet what is built up as a chaos.

In the 1916 act there were practically no American operators, two in the Atlantic and one in the Pacific, and the foreign lines were mulcting and extorting from our United States shippers.

Well, to attempt to save the situation, the Congress permitted these lines to get together and establish conferences to fix rates, not two rates, one rate, a uniform rate. That is what most of the conferences do. That is all they need for stability of rates, stability of services.

At the same time, Congress ruled, outlawed and made a crime what had been the dual-rate system. It was then called the "deferred rebate" system.

Along in 1923, this conference in which the United States Lines is one of the principals came along and conceived a new device known as the exclusive patronage contract, noncontract system. They started out with one item, automobiles. The Maritime Board held that system illegal for a few years.

Then it developed and the Maritime authorities got imbued with the idea that the dual-rate system was needed.

Now, the attack has never been by anybody on the conference system as such or the uniform rate as such. It has always been on this device or practice of the conferences, some of them, less than half of them, to use two rates and exclusive patronage contracts. "If you will agree to give us your exclusive patronage we will give you a lower rate."

If there is anything that has been denounced by our courts and held unjustified in these United States of open competition and free enterprise, it has been the economic coercion of tying anybody up to exclusive patronage. Any time that has ever come before the courts, it has been knocked down because the economic coercion enters into it and the shipper is helpless.

This court did not go as far as possibly some of us would like it to go. It did not have to go that far. Some years ago the conferences were bolder. Some of them are still brazen today. They admit the purpose of the dual-rate system is to eliminate entirely independent competition.

Counsel for the Maritime Board made that statement before a statutory court of 3 judges in New York City, back in 1950 or 1951. The Chairman of the Board, as recently as 2 years ago, said in effect, "What is the use of talking. The purpose of the dual-rate system is to eliminate independent competition," which, of course, is much worse than the Supreme Court was talking about, "curtailing" competition.

Now, I say there is not independent competition in more than four

trades anywhere in the world. The purpose of using the system where there is no independent competition is to deter any independent competition coming into that trade, to sew up every shipper as a contract signer. Why do they sign up if there is no independent? To get the lower rate. They are all signed up and no independent can possibly go into that trade.

I am only talking about American independents. Isbrandtsen is a big American independent. It operates in several routes around the world; employs nothing but American-flag ships and, to dissipate this talk about use of foreign-flag ships, there is hardly an American operator who does not use foreign-flag ships at times. Even the 16 subsidized lines often apply to the Board for permission to use foreign-flag ships.

You have about 75 American steamship operators and you have 40 belonging to conferences and of that 40 only 24 belong to conferences which use the dual-rate system. I do not know, offhand, any conference except this North Atlantic Outbound Conference and a conference out in the gulf with independent competition. That is how unimportant it is.

You had a witness here from the cotton shippers, Mr. McAshan. I may be mistaken but I understand that he is also a vice president of Anderson-Clayton, one of the biggest cotton shippers in the world, probably the biggest, a 50 percent owner of States Marine. Somebody asked did he represent a steamship operator. Well, if he is a vice president of Anderson-Clayton, his company is a 50 percent owner of States Marine, probably the biggest steamship combination in the world today and about to become bigger and gobble up other companies. Strangely, that company has been an independent operator in at least the North Atlantic trade, and has testified as such, an independent in some of these proceedings, and recently in spite of the plea for the continuation of this system here within the year Anderson-Clayton was fined \$150,000 for violating its exclusive patronage agreement with the Pacific Coast-European Conference, to which it belonged, by reason of using an independent, and after the system was put into effect on cotton in the gulf for a long time Anderson-Clayton refused to sign up and join the system and agree to the system as did the other next biggest shipper down there.

I would like to get the atmosphere clear before we go into this thing because, while it may be that a new look might be taken by this committee at the whole setup of the conference system, that is not involved in this present proposed legislation.

These people have been trying to hold the fort for all these years. In 1948 the Department of Justice went into court to have this system declared illegal.

Shortly thereafter, Isbrandtsen brought a case in a statutory court in New York for the same purpose.

Justice joined. Agriculture joined. From that time, although both the Departments and Isbrandtsen wanted this issue determined by the court, the conferences, and I may say, too, the Board just tossed us around back and forth to prevent the day of reckoning, and back in 1951 in the case in New York, Judge Frank wrote an appendix to his decision. He decided against that conference in the case on a narrow ground which was affirmed 4 to 4 in the Supreme Court of the United States.

Judge Frank raised very serious questions about the validity of this system.

Now, let me tell you something that will surprise you. People here are talking about the situation in which they find themselves. At least 3 years ago, three courts decided that none of the conferences now using the system have any right to use the system because they have never filed any requests for approval before the Board and never got any approval. The Court of Appeals in the District of Columbia so held and the Board and the conferences appealed to the Supreme Court and the Supreme Court did not upset that situation. So that every conference except possibly two, one in the North Atlantic and one in the Pacific, are presently using an illegal system, acknowledgedly illegal, because not approved and the Board has constantly stated why they would not act under those decisions.

There was 1 in the highest court in Oregon, 1 in the court in New York, and in spite of those 3 decisions the Board has said,

Nobody has the right to use it but we won't do anything until we get the question of legality of the dual-rate system established.

The Court of Appeals in the District unanimously held that the system was illegal. Isbrandtsen did not sit on that bench, Justice and Agriculture are in the case more prominently than Isbrandtsen and the Supreme Court of the United States has affirmed that decision. There is no surprise. There is nothing new. This day was coming. I have been waiting, of course. If the Board takes the position here that they want a moratorium, that is just opposite to the most recent position they have taken.

The Board has consistently said, "We will not approve a system where there is competition." So that would knock out any system that is used or proposed because, admittedly, its avowed to eliminate competition but in recent years, as I say, they are not quite so brazen. They say, "to meet competition." When the champion prizefighter goes into the ring to meet his opponent, he does not go in there to waltz around with him. He goes in there to eliminate him. That is the situation in this conference system. Every one of the 62 conferences which are now using the system has filed with the Board, under its General Order 76, a statement of the purposes for which they propose to continue to use the system. Every one of them admits that that system—and all the Board has to do is look at its files, and I have copies from the beginning of all such statements—that the purpose is to meet and eliminate competition; in other words, any American independent operator who won't join up with this foreign cartel and that is all it is. In no other form of transportation in the United States is such a thing as this exclusive patronage contract permitted.

When they passed the Bulwinkle bill pertaining to railroads getting together and fixing rates, of course, Justice fought that and that was severely fought in Congress, and one President vetoed it and it is severely disputed now. When they passed that in recent years permitting railroads to get together and fix rates among themselves, they also reserved that each railroad could continue to fix its own rates, but did not give them any right to make an exclusive patronage system with shippers. There has not been a word said about shippers. They suffer most. Forget Isbrandtsen. Forget the independ-

ent operator. Isbrandtsen happens to be the biggest independent operator in the world and an American independent operator.

Why are there not more independent operators?

Just by reason of this old world cartel system.

The latest book on this subject of dual rates is called "International Shipping Cartels." In England they are called shipping rings.

There has never been a real justification for the use of these dual-rate systems as an added practice to the conference system. What Congress intended in 1916 was to permit a uniform system which is all they need. If they adopt uniform rates they have this stability they talk about.

In all the cases it has been testified that the independents' rates have been just as stable as the conference rates. Under the uniform rate system where they agree not to increase their rates over 3 or 6 months, the shipper knows what the rates are, but under the dual-rate system what they do is tie up the shippers so that the shipper cannot exercise his freedom of action in this country of ours and patronize an independent American line and get a lower rate if and when he sees fit, because he is pressured into signing up.

All monopolies have protested, "We give a better service. We give a bigger service. We give reasonable, durable, lasting prices on our products. We can serve better than these independents we are trying to put out of business."

Why is that?

All the courts have recognized that that alibi does not stand up in the test in this country as to monopolies.

These conference systems, which are composed of 5 to 50 lines, all dominated by foreign lines, at least 10 to 1 on an average, and in many instances 20 to 1. Some conferences have no American lines. They can give more service, more sailings, and if the shipper needs more sailings than 1 every 2 weeks and some of them need a sailing every day and many of them once a week, they have to go and tie up to the conference lines. If the independent does not serve all the ports that the 20 conference lines serve, which is often the case, and the shipper wants to go to a certain port, he has to sign up,

If the independent does not have refrigerated service or silk rooms like the Japanese lines, that shipper has to go to the conference lines.

Now, to talk about rate wars and rate kickbacks: Rate kickbacks are going on all the time among the conference lines themselves who have no independent competition. The rate war in the Pacific, which started in 1953 in this trade which was involved in this Supreme Court case, was among the conference lines themselves.

The eight Japanese lines started cutting rates. Some of the 4 other foreign lines started it, and some of the 5 American lines started it. They were all in the conference.

The Japanese Ministry found that they were cutting rates. They used the rate-war device to take care of their own people and also in an attempt to dispose of Isbrandtsen, the only independent in the trade.

Whether this conference system, even with its uniform rate, takes advantage of the shipper is best demonstrated in that trade. For years and years shippers in that important trade from the Far East to the three coasts of the United States, Pacific, Gulf, and Atlantic, complained about the conference rates. They said, "You are way too high." When this rate war came along Isbrandtsen, who was in-

dependent in that trade, was put out of the trade by reason of the rate war and lost millions of dollars.

The conference, of course, went along and charged rates way below Isbrandtsen. They charged rates that were below their costs of stevedoring in California, and now they have gotten together to fix rates and they fix them, confirming everything the shippers said. They fix them now at about 50 percent of what they were when the shippers originally complained about them.

This conference system with the uniform rate can mulct American shippers. They are the ones involved. Every foreign line could charge just one half the rate it is getting now.

By reason of its conference membership, the American subsidized lines are permitted to do something that entirely violates the spirit of our subsidy act. Our subsidy was supposed to meet the difference in cost of carrying cargo really of American lines with their high ceiling of cost due to wages principally, and I say every foreign line could carry at least one-half the price. What happens? They get together in a conference. They sit around the table. They find out that the American ceiling of cost is, \$40 a ton New York to Japan. They say, "All right. We will all get \$40 a ton." That is a 100 percent bonus to all the foreign lines, practically none of whom pay any income taxes in the United States and most of them do not pay any taxes in their home country because they do not operate in or out of their home countries.

Rate wars? There is a history of rate wars and most of them were among conference members where there were no independents. They were fighting among themselves.

In one of the most recent ones out of the Far East, Burma and so forth, to Europe, there is no independent in there. They fought among themselves so they wound up carrying freight free.

There was a rate war between Japan and the Philippines and it is doubtful if anybody can point to any real rate war that would be charged to an independent.

The independent, as has been testified to by shippers, the few who ever dared to testify, is a deterrent against the conferences going overboard and soaking the exporter all the traffic will bear.

Mind you, all this surplus freight monies that goes to these foreign operators comes out of the pockets of American exporters, importers and, finally, the consumers.

The rates they charge in some instances are outrageous.

This cotton representative was here talking about the rate on cotton out of the gulf. It reminds me of another coercion that is effective. The difference between the contract price, the lower rate and the higher rate, is often enough to prevent the shipper making a profit if he should be compelled to pay the higher rate, and that was testified to in this Japan-Atlantic case, the one before the Supreme Court.

In the cotton trade the difference between the contract and the non-contract price for cotton out of the gulf to the Far East, where great quantities go, is \$4 a ton. That is a difference which compels the shipper of cotton to sign up to deal with the conference lines exclusively.

There is no independent line carrying cotton from anywhere around the world except possibly out of the gulf to the Mediterranean.

Isbrandtsen is not in that trade. The margin of profit at \$4 a ton amounts to \$1 a bale, and that dollar a bale is about the margin of profit testified to by several witnesses in one of the cases recently before the Board. Of course, what can the shipper do? He has to sign up unless he pays the higher rate from stubbornness. Many shippers would like to say, "I won't sign. I am entitled to patronize any line I want to. This is a free country and I wouldn't sign this or that."

One of the great sobs thrown out for years is, "Every shipper can sign up if he wants to." That alibi has been knocked down as offensive to meager intelligence.

The same argument used over the years and I hope it is abandoned now, because it died of double pneumonia from ridicule, is that every independent line can join the conference if he wants to.

There are lots of groups that I refuse to join.

There is one thing that I would like to straighten out in the minds of these members before they go further with this question. We have liner berth operators, like the 40 of our American companies which belong to conferences including all 16 subsidized lines and Isbrandtsen. We also have tramp operators, so called. Of course as you gentlemen now know, the word "tramp" is not a derogatory term at all. They are bulk operators. Now, in tramp bulk carriers like metal scrap, there are no two rates. That is what the conferences carry as bulk cargo on an open rate. The tramp competition is often talked about by these conferences. These conference lines, most of them, are not in the tramp business, but the tramp or bulk carrier under the law is not even permitted to join the conference. The law says only common carriers.

Gentlemen, the whole thing simmers down into a simple proposition. You have common carriers. You are only dealing with common carriers. You have common carriers obligated to take anybody's cargo that is offered to it, charging two rates for identical transportation service. That has never been disputed, not even by them. There is no difference in the service rendered to the exclusive patronage contract signer and the nonsigner.

In the gulf the cotton shipper who would pay the \$40 a ton to ship his cotton to Japan would have his cotton loaded on that ship and if somebody was foolish enough to be stubborn and not sign up, he would have to pay \$44 a ton. His cotton is loaded on that ship right alongside of the \$40 cotton, carried under the same conditions of loading, discharge, and so forth, and in one instance testified to down there, they had three different rates for carrying goods on the same ship. One of the fundamental principles of the Maritime Board and, of course, all transportation, is that you cannot charge two different rates for transportation under identical conditions.

Hundreds of cases before the ICC have been so decided.

The dual rates always come back with this old stock argument, "Well, this ocean foreign commerce is something different. You can't regulate it."

I think the Department of Justice will tell you that they see no difficulty in proceeding against monopolies or violations of our monopoly laws like the Clayton Act, which provides that it shall be unlawful for any of these combinations in the foreign commerce of the United States. This is no great difficulty. Over the years the dual rates have

built up this idea of "You can't regulate rates between New York and England because they are two rates at different ends." I have never succumbed to that obstacle at all. It has never been analyzed. And in any event, it is no answer to this particular situation.

I could not possibly, within the limited time which I desire to take today, even answer the witnesses heard today.

There was a hush-hush on these penalties. When a shipper violates his exclusive patronage contract, he is fined from 50 percent of the freight he would have paid up to 200 percent of the freight he would have paid.

As I say, Anderson-Clayton was just soaked with a fine of \$150,000 on the west coast, and I could name others tied up to that conference, who were fined. The members of that conference are practically all foreign lines, Pacific Coast-European Conference, whose chairman testified on the stand not so long ago under oath that the purpose of this system is to eliminate all independent competition.

You are faced with the fundamental proposition, do you want to eliminate all independent competition, American competition? Just restrict your condemnation to that.

As to the witness for the United States Lines talking about the outbound conference to the continent having the system and the inbound conference not having the system, well, of course the decision that was decided in the New York statutory court and which stood after an appeal to the Supreme Court, held that the use of the system in both those trades was illegal. That was on a narrow ground, not the main legal ground, which came before the Supreme Court this time.

The Homebound Conference from the continent broke up by reason of kickbacks and rate cutting among its own conference members.

This talk about 16 subsidized lines being driven out of the trade has no weight. Of course, they could not be driven out of the trade. There is none of them operating out of the west coast that has any independent competition.

Lykes, out of the gulf to the Mediterranean, to Europe, has independent competition, and two of those competitors are foreign lines, which used to belong to the conference and broke away. At that time, Lykes went in and cut all rates 50 percent in a rate war so that even the Board had to go to the court and get an injunction against the conference lines themselves cutting rates 50 percent.

The differences in the spread, or differential between contract and noncontract rates, the lowest is about 10 or 9½ percent in the current case. The spread goes up to the percentage base of 30 percent and on the dollar a ton basis it runs from \$3 to \$6 a ton. Now, when you figure the price of the commodity, and sometimes straight rates on special commodities run as high as \$200 a ton from the North Atlantic to the Far East, you can see that you get into figures where the difference or spread just makes it impossible for the independent shipper who, for reasons of his own, obstinacy or not, would like to go on his own and not sign up even though there is no independent to carry his goods. He just has to sign up or admit himself that he is a fool for paying this higher rate which will put him out of business as some of the witnesses in this case that went to the court testified before the Maritime Board.

The CHAIRMAN. Let me ask you one thing.

Going back to that Clayton fine of \$150,000, who fixed that fine?

Mr. O'CONNOR. The conference.

The CHAIRMAN. How did they fix it?

Mr. O'CONNOR. They said that Anderson-Clayton had used a foreign line from the Pacific to Europe, I think it was, and in that way they had violated their exclusive patronage contract, and they were fined. That was the amount of freight.

The CHAIRMAN. You say "fined." That is the point I want cleared up.

Mr. O'CONNOR. A penalty under their contract.

The CHAIRMAN. Who set the fine?

Mr. O'CONNOR. The conference.

The CHAIRMAN. To whom did they pay it?

Mr. O'CONNOR. If Anderson-Clayton has paid it they paid it to the conference.

The CHAIRMAN. Well, did they pay it?

Mr. O'CONNOR. I do not know the fact.

The CHAIRMAN. You testified to the fact here.

Mr. O'CONNOR. They may still be disputing it, and they are such important shippers.

The CHAIRMAN. Who will divide up the \$150,000?

Mr. O'CONNOR. That is the question which has never been answered. It has never been answered in any of the hearings as to who will divide it up, whether it will go to the lines that were available at the time or go to all the lines that do not even operate in the trade. That has been one of the mysteries of this whole thing.

The Maritime Board has pending itself in California at this time——

The CHAIRMAN. Let us not leave that. Let us clear that up.

Mr. O'CONNOR. I say it is connected with this fining of shippers.

The CHAIRMAN. You said "a fine." Who had the authority to assess a fine?

Mr. O'CONNOR. Under the exclusive patronage contract, the shipper agrees that if he patronizes anybody but a conference line——

The CHAIRMAN. I understand that.

Mr. O'CONNOR. He shall pay a penalty equal to the amount of freight, I think in that instance. In some instances it is twice the amount of freight that would have been paid the conference lines had he patronized the conference lines.

They say, "Unless you pay that penalty, hereafter if you ship anything over conference lines, you must pay the higher noncontract rate." Shippers are helpless.

The CHAIRMAN. I understand that he would go into the higher rate automatically.

Mr. O'CONNOR. He would until he paid his fine.

The CHAIRMAN. Is this the only case in which a fine has been levied?

Mr. O'CONNOR. No, out in that particular territory just within the year there have been several instances.

The Borax Company of America, whatever it is called, a big company that sells borax out there.

The CHAIRMAN. We got a letter from the Borax Co. supporting this dual rate, which I will put in the record, along with one to Congressman Magnuson.

(The letters referred to follow:)

UNITED STATES BORAX & CHEMICAL CORP.

Los Angeles, Calif., May 29, 1958.

HON. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.*

DEAR MR. BONNER: This will confirm my telegram of May 26 as follows:

"Referring my conversations you John Drewry April 15, letters April 22, Supreme Court decision May 19, Japan Atlantic dual rates makes imperative appropriate legislation to continue rate stability provided by steamship conferences. Am sure you fully cognizant situation. There will be ample shipper support. More detailed letter follows."

Yesterday I wired Mr. Morse as follows:

"Referring conversations you Tibbott April 16, letter April 22, have wired Bonner urging prompt congressional action maintain conference contract rate stability. Substantial shipper support this position. More detailed letter follows. Best regards."

We understand that various bills have been introduced and/or are being prepared for introduction. I would like to reserve further comment until we have a chance to study these various proposals; and then have the opportunity of submitting our comments and suggestions—and/or testifying personally at hearings, which you will undoubtedly decide to hold. It does appear that some immediate interim action to maintain the status quo is appropriate and necessary, while we are all studying the matter.

Very truly yours,

T. R. STETSON,

Manager, Export Sales Department.

P. S.—I am also communicating appropriately with Senator Magnuson.

T. R. S.

UNITED STATES BORAX & CHEMICAL CORP.

Los Angeles, Calif., May 29, 1958.

HON. WARREN G. MAGNUSON,

*Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington, D. C.*

DEAR MR. MAGNUSON: We enclose copy of letter to the chairman of the House Committee on Merchant Marine and Fisheries and the letters referred to therein regarding the necessity of maintaining stability of rates provided by steamship conferences under contract system. Undoubtedly you are also considering legislation and as outlined in the attached we would like to have the opportunity of presenting our views at an appropriate time.

I hope that on my next trip to Washington I will have an opportunity of meeting you personally.

Since returning from Washington and particularly within the last few days I have been talking to a number of substantial shippers who are all of the same mind regarding the need for stability and who will undoubtedly be similarly expressing their views.

Very truly yours,

By T. R. STETSON,

Manager Export Sales Department.

Mr. O'CONNOR. They finally succumbed by necessity. They had to pay their fine. That is the pressure, the economic pressure.

The CHAIRMAN. I am going to find out about this "fine" business.

Mr. O'CONNOR. The Borax Co. even went to court.

Mr. WARREN. Mr. Bonner.

The CHAIRMAN I will hear you later, Mr. Warren.

Did you have some light to throw on this question that we are discussing here?

Give your name, then.

Mr. WARREN (Charles F. Warren, Pacific Coast-European Conference). My name is Charles F. Warren, and I represent the Pacific

Coast-European Conference, the conference which has imposed the fine on Anderson-Clayton.

However, at this time, I am not authorized or permitted to discuss this particular matter but wish to state that at the time when the committee is able to hear my testimony before the close of these hearings, I would be happy to comment on this particular matter.

Mr. O'CONNOR. There are 2 cases reported in the courts, 1 in the Oregon case, which went to the highest court there where the Pacific Coast Westbound Conference, which may be heard here, levied a very heavy fine against a shipper named LaValle.

The CHAIRMAN. Do not leave that Borax matter.

Mr. O'CONNOR. I may be mistaken about the detail, but, in connection with this litigation out west, the Borax Co. complained about the pressure being put on them to pay fines, as I recall, for not observing their exclusive-patronage contract.

As I recall, the Department of Justice stepped into that case and tried to have the courts hold that the treatment of the Borax Co. was illegal.

In hearings before the Maritime Board, the situation as to the Borax Co. arose, and it is my best recollection that it all wound up by Borax composing their differences with this particular conference and agreeing to abide by its exclusive-patronage contract.

Now, a tremendous shipper like Borax just has to.

The CHAIRMAN. I listen to Wagon Train every week. I know they are pretty big operators. Was this fine the difference between the low freight rate and the high freight rate?

Mr. O'CONNOR. No; it was based on the amount of freight which would have been paid to the conference lines and, of course, it was a fine.

The CHAIRMAN. Mr. Witness, of course, this committee has given you around 40 minutes. If there is some matter you care to appear further on later, of course, the committee will be glad to hear you.

Mr. ALLEN. Mr. Chairman, could I ask one question?

The CHAIRMAN. Yes.

Mr. ALLEN. Mr. O'Connor, taking a look at the bill, H. R. 12751, could you give me your opinion as to whether the language of this bill, if it were enacted, would keep in effect the conference agreement that was involved in the Japanese-Atlantic case?

Mr. O'CONNOR. Of course, they have no dual-rate system in effect.

Mr. ALLEN. I am referring now to the language of the bill. With the enactment of the bill, would the agreement still be in effect?

Mr. O'CONNOR. Well, it is not in use by the members of the conference. That answers it. It is not being used, and it never has been used since the war.

Mr. ALLEN. The answer is "No"?

Mr. O'CONNOR. That would be my offhand opinion.

Mr. ALLEN. Thank you, Mr. Chairman. He said that conference agreement would not be in effect because of the enactment of this bill.

Mr. O'CONNOR. No more than it would be in the companion conference, the Trans-Pacific Conference in Japan, from Japan to the Pacific coast, which the Board itself held illegal and would not permit it to be put in use because it was practically a monopoly of competition and would suppress what little competition there was.

The CHAIRMAN. We have to recess now.

I want to put in the record these two telegrams, dated June 2, from New Orleans; one from Ralph P. Nolan, president, Board of Commissioners, Port of New Orleans, and the other from Albert Hanemann, president, New Orleans Board of Trade. These telegrams support the proposed bills that are here before the committee.

(The telegrams referred to follow :)

NEW ORLEANS, LA., June 2, 1958.

HON. HERBERT C. BONNER,

House of Representatives, Washington, D. C.:

The Board of Commissioners of the Port of New Orleans supports Senator Magnuson's bill, S. 3916, as being in best interest of foreign trade of United States. Board believes dual-rate system as administered by various shipping conferences of great value to exporters and importers, especially smaller firms. Request incorporation of this message in proceedings of June 3, 1958.

RALPH P. NOLAN,

President, Board of Commissioners, Port of New Orleans.

NEW ORLEANS, LA., June 2, 1958.

Representative H. C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee,
Washington, D. C.:*

It is the feeling of the New Orleans Board of Trade that the conference dual-rate system, commonly known as the contract system, is of inestimable value to exporters and importers, large or small, of general cargo, such as cotton and other commodities, and that it offers stability and equitable rates with dependable and regular services over a period of time. For these reasons, we are strongly in favor of S. 3916, introduced by Senator Magnuson, which we understand will legalize existing contracts through June 30, 1960. We kindly ask you incorporate this message in the proceedings of the hearing to be held beginning June 3, 1958.

ALBERT HANEMANN, *President.*

The CHAIRMAN. If it can be arranged, and the House is in general debate on the reciprocal-trade bill and we can get permission, we would sit this afternoon from 3 to 4:30. That is tentative, so that I will say to the next witness, Mr. Dewey and Mr. Talmage, we will call you this afternoon at 3 o'clock.

Thank you.

(Whereupon, at 12:30 p. m., a recess was taken until 3 p. m. this same day.)

AFTERNOON SESSION

The hearing was resumed at 3p. m., pursuant to the recess.

The CHAIRMAN. The committee will come to order. At this point, I want to have inserted in the record sections 14 and 15 of the 1916 Shipping Act.

When this committee recessed this morning, Mr. O'Connor was testifying.

Mr. O'Connor, would you resume, please?

Mr. O'CONNOR. May I suggest you might also put in sections 16 and 17, which deal with the same subject of discrimination between shippers and so forth. All the cases have hung on not only 14 and 15, but 16 and 17, also.

The CHAIRMAN. They will be put in the record, also.

(The sections referred to follow :)

SEC. 14. That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighter ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense.

* * * * *

SEC. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Board may be order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the Board shall be lawful until disapproved by the Board.

It shall be unlawful to carry out any agreement or any portion thereof disapproved by the Board.

All agreements, modifications, or cancellations made after the organization of the Board shall be lawful only when and as long as approved by the Board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An

Act to protect trade and commerce against unlawful restraints and monopolies", and amendments and acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled, "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

SEC. 16. That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

That it shall be unlawful for any for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine, insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act.

Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

SEC. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the Board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

The CHAIRMAN. Mr. O'Connor, when you began your testimony whom did you say you represent?

Mr. O'CONNOR. I represent the Isbrandtsen Co., Inc.

The CHAIRMAN. How many ships do they operate?

Mr. O'CONNOR. Oh, they operate at times probably 35 American-flag ships.

The CHAIRMAN. All of their ships are American flag?

Mr. O'CONNOR. All the ships they own are American flag.

The CHAIRMAN. They do not operate any foreign flag?

Mr. O'CONNOR. They charter like practically every other operator from time to time.

The CHAIRMAN. Are they an applicant for subsidy?

Mr. O'CONNOR. They are applicant for subsidy.

The CHAIRMAN. If they were to become subsidized, would they join a conference?

Mr. O'CONNOR. They have not made up their mind. They have had varying opinions about that.

The CHAIRMAN. Are they going to testify or are you the sole person to testify?

Mr. O'CONNOR. They will ask permission to testify, too.

The CHAIRMAN. I remember when Mr. Isbrandtsen was before this committee some years ago. Of course, you remember that he was against all of the policies of the Merchant Marine Act at that time, as I recall.

Mr. O'CONNOR. I do not remember that.

The CHAIRMAN. I remember it well. I am talking about not the one who is living now but the one who is dead.

Mr. O'CONNOR. I do not remember that, Mr. Chairman.

The CHAIRMAN. He raised Cain all over this place. I remember him well. Does the same policy exist in the company now that existed then?

Mr. O'CONNOR. Of course, I am not competent to discuss company policy. I am just a lawyer.

The CHAIRMAN. I will ask somebody else.

Mr. O'CONNOR. I am not competent to answer that.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. I wanted to get settled in the record, if I could, what division there is among the steamship operators who are engaged in the berth services in the foreign import and export trade. If I understood Mr. Maloney correctly this morning, he said that there was one operator, which was Isbrandtsen, which was not a member of any conference engaged in that trade, and that all of other American-flag lines, the subsidized lines and the unsubsidized lines, were members of the conference system and in favor of the passage of this bill. Is that a correct statement?

Mr. O'CONNOR. I do not believe it is and I do not believe it could be correct for the reason that you start out with the improper figure.

As I said this morning, there are roughly 75 American lines engaged in all kinds of cargo carrying in the foreign trade, in the oceans, and of them, 40 belong to conferences. But those same lines do not belong to every conference which operates in the particular trade route in which they operate. For instance, you take States Marine, which I said was one of the biggest. They belong to conferences in various parts of the world but they never joined the conference in the trade in the North Atlantic to the continent. They are independent operators in that trade.

As far as the dual-rate system, of the 40 which belong to conferences only 24 belong to conferences which use the dual-rate system.

Mr. ALLEN. What I am trying to get at is not the merits of the case so much as the division of opinion and what I would like to know is, to be more specific, is there any carrier whose position is identical with that of Isbrandtsen?

Mr. O'CONNOR. Well, I do not know. I can only answer that by saying that no one can say that no other American carrier does not feel the same way about the dual-rate system as Isbrandtsen.

You must remember that, as was pointed out and expressed in 1916 and before, before the Alexander committee, and was pointed out in

the English investigation, the royal commission investigated over there, and as has been pointed out time and again before the Maritime Board and accepted as a fact, shippers do not dare to testify in opposition to the conference or the dual-rate system because they believe that they will be retaliated against and not even get space.

Now, the operators are in the same boat.

Mr. ALLEN. I appreciate that, but it is not getting at the question that I want to pin down for the purpose of the record. That is whether your opinion is joined in by others.

I would presume from the many hearings and many matters in which you have appeared that you would have noticed if someone friendly came along and offered you a hand.

I am curious as to whether there is any line that is not identical in opinion with Isbrandtsen but comes close to it or is more friendly than any of the others.

Mr. O'CONNOR. Well, I can say that on one occasion Lykes, one of the biggest operators, a subsidized operator which I suppose belongs to 30 conferences, filed 5 proceedings before the Maritime Board in recent years opposing the use of the dual-rate system in certain trades in which they were competing.

Mr. ALLEN. On that occasion, you feel that they were close to the opinion of Isbrandtsen?

Mr. O'CONNOR. Yes. You see, it is a vacuum that sucks them in. They have to get sucked in. They cannot stand off. Isbrandtsen has been fighting this thing on principle and if you say I represent Isbrandtsen, I have said before the Board if I did not represent Isbrandtsen today I would apply for permission to appear here on principle against this thing which I think is so un-American.

Mr. ALLEN. I can appreciate your feeling and admire your stand in that.

From the standpoint of this side of the desk, I am a little apprehensive of refusing interim relief and it is definitely interim relief to maintain a status quo which may ultimately be found to be good or bad when one operator says, "Don't do anything about it" and all the rest that are engaged seem to say that "We should have the interim relief."

Mr. O'CONNOR. One operator plus the departments of Government. As I told you this morning, the Department of Justice was at the start of this attack on the dual-rate system before Isbrandtsen came into the picture, and the Department of Agriculture has been here, and I understand that tomorrow some representatives of the farm organizations will appear and they have testified against the use of the system. They are the biggest shippers.

Of course, the Department of Agriculture is the biggest shipper in the world and just today, from the Department of Agriculture, from one of their top men who testified, speaking about the case, says—

This is certainly a victory for the American farmer and the American shippers in general.

That is the big thing always, not Isbrandtsen. What happens to Isbrandtsen is unimportant.

Mr. ALLEN. I can appreciate that and I think we welcome and value the opinion of the departments, but we still have a tradition around here that we are going to write the policy in Congress.

Mr. O'CONNOR. Exactly.

Mr. ALLEN. That is about as far as it goes on that sort of transaction.

I think I understand the situation as to what the division is amongst the carriers themselves.

Mr. O'CONNOR. You only know from what some people have told you and I say that the testimony this morning was from people who are unfamiliar with the fundamentals of the system.

I will say that you could count on one hand, you certainly could count on one hand and would not need the whole hand, to count lawyers who have had any great connection with this issue in all these years, and it has been our experience going into courts that the courts starting out had no idea what a conference was, let alone the dual-rate system. It is such a restricted field that most organizations start out without knowing what it is about, and there is nobody in Congress today who has had anything to do with conferences or the setup under the 1916 act.

As I say, the conference system was by itself harmless. It just provided for uniform rates and getting together and fixing rates which, of course, is not generally permitted in the United States, but then they added on this tying-in arrangement with shippers which has never been permitted in any case in the United States.

Mr. ALLEN. It seems to me, listening to your testimony and to the testimony of others both here and on other occasions, that it possibly sums up at least in my own mind that there are two philosophies that could prevail in operating a transportation system: One, the system under which a carrier is a competitor in a free enterprise and free to do what he wants, free to compete freely and get what business he can by price or service or otherwise; and the other where a public body regulates to an extent, the services and the charges and produces a uniformity of schedules and services approaching the system that you have domestically among the railroads; and that there are just two approaches to this system and that Isbrandtsen has one which is the more rugged individualist and the other carriers approach the other where they are subject to the type of philosophy that controls our transportation among common carriers domestically.

Mr. O'CONNOR. When you boil down this decision of the Supreme Court, even if you claim it was limited, they do not differentiate one iota of what has been the position of the Federal Maritime Board in recent years.

They have said, "We will not approve any system which is aimed at limiting competition."

Now, this Supreme Court decision said that "We will not approve it if it curtails or diminishes competition."

Now, the Federal Maritime Board has held that 80 percent control was a monopoly which they would not permit.

In the Japan-Atlantic case that went to the Supreme Court it was admitted that there was 90-percent control there, but the Board then said, "We will permit it," and in a parallel case, the Trans-Pacific case, they refused to approve the system because it wiped out a small amount of competition, Isbrandtsen again, and they said, "Oh, no. We won't stand for that. You have to show the need of the system in the trade but not to eliminate competition."

I could show you the quotations from the very people who think this system is indispensable, that everything will collapse, to the effect

that the purpose of the system is to eliminate competition. Well, it will not collapse and it will not hurt American lines but its continuance will help the foreign lines to the detriment of some American lines who do not want to put their head under that tent.

Now, it has been the feeling of Mr. Isbrandtsen, senior, at least and myself, that one should think well before joining a conference as they exist today, and some people have found that out.

If you are an American operator with ships that do not need the speed or accommodations of the Japan ships, you will soon find in the trades with competition with Japanese that you will be out of real competition with them. They will put you out.

Before World War II, the Japanese drove practically all the American lines off the Pacific and they are in a fair way to do it now out there. They have the high-powered ships with all the accommodations and facilities on them.

The average American independent buying and owning his own ships just could not last except as an independent. He can exist as an independent where he could not exist as a member of some of those conferences.

I do not think Congress is going to say the day of independent enterprise, standing on our own feet, is entirely past, that you have to join up with these foreign cartels.

Mr. ALLEN. I understand that that is the view of Isbrandtsen and I gather pretty much that it is your own very heartfelt view.

Mr. O'CONNOR. It is my own fervent view.

Mr. ALLEN. What I am trying to get clear in my own mind is whether it is the view of the industry as a whole, half the industry, or whether it is just your view and the other industry view is all different.

Mr. O'CONNOR. Well, I do not think anybody can speak for all the industry. The representative of the American Merchant Marine Institute claimed to represent so many companies. He was including companies that are not liner companies. Tramp or bulk carriers, of course, are not concerned with this dual-rate system because it does not apply and cannot apply to tramp operations or bulk operations so that all his members are not liner operators and if they all said to you, each one, every one of them, said, "We are in favor of this dual-rate system," I could point out to you that most of them have had no experience with it enough to know whether they were for it or not. It is taken as a setup, this Old World setup. Sure, they have it all around the world. Big companies like Goodyear Rubber that operate all around the world, have tried to patronize independents at times. So has Ford. Ford tried to patronize Isbrandtsen at times. Some of the rubber manufacturers tried to do so but they frankly confessed and have so testified in hearings before the Board, they said, "We belong to conferences all around the world. We have to. If we fight any conference here operating out of the United States ports, we are going to get in trouble. If it was an independent and we can probably go along and succeed the same as some of the cotton shippers in the gulf have tried to do it, but when we are operating in the rest of the world we get in trouble with the rest of this combine."

The biggest conference is the Associated Steamship Lines of Manila. Its operations centered in Manila. It is a huge octopus of 50 members, just a handful of American lines and the rest all foreign. It has

7 divisions, operating out of Manila, 1 to the United States. Because that one operation comes to the United States, the Maritime Board approves this huge conference, but if a shipper shipping out of Manila to different parts of the world violates or does something the conference does not like in any one of these other tentacles in any part of the world, he is barred from all rights under that conference even to the United States.

Now, the Board has struggled with that problem for years. The power of that conference and other conferences goes so far that an independent operator cannot go into Manila even and get cargo because, like the big operator out of the Pacific, the Pacific coast-European conferences prescribe that no forwarder, no agent, no broker that deals with an independent line can deal with the conference. They have tied it up. That tying up is so anti-American that it would never have stood up if it was proposed as a part of this bill, any retaliation against a shipper for using an independent line. That is the language of the bill. And the courts have now spoken for the first time, 12 judges have spoken against the system being legal. Of course, no such system can stand up. All you are trying to do is to preserve in existence systems which are undoubtedly illegal because they are aimed at curtailing or destroying competition, as the courts have said, the court of appeals here, 3 judges unanimously and now the Supreme Court with 6 judges to 3 judges.

As I said this morning we have been tossed around and the stalling has been going on for 12 years.

This is just another 2 years of further stalling and to say that the shipper and anybody that is interested in not being hooked into this system for another 2 years is just like postponing a major operation that should be done now and not 2 years from now.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. You do not think, then, that there is any motive here of preserving the industry at all, do you?

Mr. O'CONNOR. I think any statement about chaos or damage to the industry is without foundation because they are asking you to O. K. a thing which means nothing to them. It has not protected them in the past because they are not using it.

You take, for example, the Pacific coast. Off the Pacific coast there is no independent competition, I would say. There is no independent competition anywhere except North Atlantic to the continent, gulf to the Mediterranean, and Pacific coast to Europe.

The CHAIRMAN. You made some reference to Lykes. The Lykes representative is here. He held up his hand.

I do not know for what purpose he held up his hand.

Mr. BARTLE (Thomas Bartle, Lykes Bros. Steamship Co.). My name is Tom Bartle. I have worked for Lykes Bros. for over 25 years and throughout all of those years we have been members of a conference. We have been strong advocates of the dual rate system.

We heartily favor this bill and we will have a witness to so state later on.

I did not want the statement to mislead anyone about the position of Lykes.

Mr. O'CONNOR. I did not say to the contrary except that they fought the dual rate system in five conferences and the payoff was that the conference met their terms and took them in and did everything they wanted to do. That was the payoff.

The CHAIRMAN. I have to get along here.

Mr. O'CONNOR. There was some question this morning about this form of shipping contract.

The CHAIRMAN. I want the members to ask you any questions they want. We ought not take up all the time with one witness.

Mr. RAY. Thank you, Mr. Chairman. I would like to get clear on one point you covered this morning to see that I understood you correctly. You said that the actual working of a conference involved the development of the rates that let American-flag ships operate at a profit and that those rates then became the rates of the conference and that they were exorbitant insofar as foreign vessels were concerned.

Mr. O'CONNOR. That is correct.

Mr. RAY. What foundation do you have for that statement?

On what sort of knowledge do you base that?

The CHAIRMAN. Will you read that?

(Record read.)

Mr. O'CONNOR. Of course, that has never been disputed that foreign lines can operate at just about one half the cost of American lines on the average. As I said this morning, that is due to our high cost of operation, principally our wages. The Japanese wages are 25 percent, the English wages are generally 25 percent of what we pay. The others will bring it up to a higher average, not even 50 percent. The Scandinavians pay more. The Danes and the Dutch pay more but the subsidy granted American lines is based on the proposition generally that the cost of operating an American ship is just about one half the cost of operating a foreign ship. Roughly, the cost of operating an American ship, we will say, is \$2,000 a day. The cost of operating a foreign ship is \$1,000 a day, and the American operator is given that difference in subsidy, \$1,000 a day. Now, in some trades the foreign operation costs much less. Around the world east-bound, the subsidy ought to be about 55 percent, because the foreigner operates at about 45 percent of the American cost. That is the basis of the difference so that the foreigner could carry the goods at just about one-half what the American needs.

Mr. RAY. When you referred to the costs of the American-flag ship were you referring to the costs after subsidy?

Mr. O'CONNOR. No. Well, any day. You pay so much for wages, repairs, fuel, and insurance and maintenance and subsistence. Those are the items taken into account in granting a subsidy.

Mr. RAY. What I am reaching for is, do you think they take into account the actual amounts involved for the American ships before subsidy or take into account the net burden on costs for the American ship after subsidy?

Mr. O'CONNOR. Well, the cost of operation payment out of pocket for wages, subsistence, fuel, repairs and insurance are the same as before.

Take, for instance, Isbrandtsen now operates American-flag ships around the world and is applying for a subsidy. If it is granted a subsidy it will be given the difference between the cost of operating the Isbrandtsen ships, which we will say is roughly \$2,000 a day, which is very conservative, and the cost of operating foreign-flag ships on those trade routes, which is less than \$1,000 a day. So on

each voyage Isbrandtsen would make they would be paid a subsidy along that line.

Mr. RAY. Let me point up the question.

On the assumption that those same figures applied to some other line which is a member of a conference, when they develop rates, do they use the cost figure of \$1,000 a day or \$2,000 a day?

Mr. O'CONNOR. Yes; you are aiming at something that is really interesting, because there was a certain purpose of the Subsidy Act some of us always believed in in 1936. I had something to do with it. I brought it into the House and as chairman of the Rules Committee jammed it through the closing day of Congress with a gag rule, so I know something about it. The spirit of the subsidy was, we say: Foreign lines can carry canned goods from the North Atlantic to Europe for \$10 a ton but the American line should get \$20 a ton on account of its higher cost of operation. Therefore, we will give the American line the difference, \$10 a ton assuming that the American line was going to charge the same rate as the foreign line. But confusion has happened. Over the years the American lines, through conferences and through the instruments of conferences, have sat down, as I said, across the table and agreed that everybody in the conference gets \$20 a ton and, of course, there could be 20 foreign lines and 1 American line, and the American line gets \$20 a ton, and then gets the subsidy on top of that.

The CHAIRMAN. What do you do about the recapture clause?

Mr. O'CONNOR. The recapture clause only provides that over the 10-year period the Board gets back 50 percent of everything that the American line makes over 10 percent on its capital necessarily employed.

The CHAIRMAN. Yes.

Mr. O'CONNOR. That gets back some, theoretically.

The CHAIRMAN. You were leaving that out up until now.

Mr. O'CONNOR. I assure you, Mr. Chairman, that it was not deliberately.

The CHAIRMAN. I do not think it was deliberately but I wanted to refresh your memory that such a thing existed.

Mr. O'CONNOR. I do not think it has much effect on the general question.

The CHAIRMAN. You are arguing here for a line that cuts rates. They would not have any chance for a recapture; would they?

Mr. O'CONNOR. No, because they do not have the advantages that the subsidized lines do have.

The CHAIRMAN. But they are asking for subsidy.

Mr. O'CONNOR. Of course, that about cutting rates is some more of the manufacture of noxious clouds around Isbrandtsen.

The CHAIRMAN. Is it a factor or is it not a fact?

Mr. O'CONNOR. Generally, it is not a fact and it has not been substantiated in the bold statement in which you make it.

Mr. O'CONNOR. The overall statement, the broad statement I should have said.

Now, I hear the snickering behind me. That has been a calculated practice of the conference lines here. I am the only lawyer, I think, that will appear before you who represents an American line solely.

Taking into account that if any conference lawyers appear before you, their clients are mostly foreign corporations.

As to this cutting rates, of course, that has been thrashed out. There is no law or any obstacles to it, even the Federal Maritime Board has held. The independent has to give a lower rate than these conference people to get business, as Macy agrees to give 6 percent less than any other store in New York, less than Gimbel, but when you go into Macy to get this 6 percent less you do not have to sign up to deal entirely with Macy, and nobody has criticized that.

Mr. RAY. Mr. O'Connor, can we get back to that thousand dollars?

Mr. O'CONNOR. Yes.

Mr. RAY. You say that that is just sort of put on a sign on the wall and they look at it but pay no attention to it as to what they are paying as an agreed-upon rate.

Mr. O'CONNOR. That is substantially it. The American can say, "We have got to get that \$2,000 a day. We have got to get it and we need it. We need the \$20 rate. You foreigners can get along with the \$10 rate."

The foreigners say, "You are in the conference. Your law passed in 1916 says we should fix uniform rates, everybody gets the same rates. If you have got to get \$20 we are going to get \$20, too."

Mr. RAY. The question I was coming to was, are you testifying from facts developed within your own experience or your own knowledge?

Mr. O'CONNOR. Yes, before the Federal Maritime Board. I do not think anybody will dispute those facts.

Mr. RAY. That is all, Mr. Chairman.

Mr. ALLEN. Would you yield?

Mr. RAY. Yes.

Mr. ALLEN. Mr. Chairman.

You lost me, Mr. O'Connor. If the cost is \$1,000 to run a foreign ship and \$2,000 to run an American ship and our Government gives the American operator a thousand dollars, then why does it not cost each of them a thousand dollars and the rates be based accordingly?

Mr. O'CONNOR. Well, as I say, that may have been the intent of Congress when they were dealing with subsidies but it just has not worked out. The only reason given for it is that the 1936 act said that the American subsidized lines shall get the difference in cost of five items: rates, subsistence, fuel, repairs, and insurance, and the matter of the cost of carrying freight was not actually put in the act but has worked that out so that some subsidized lines make a reasonable profit without the subsidy and often the subsidy just about equals the amount they pay in dividends to their stockholders. You must remember that amount comes out of the United States Treasury and is contributed by every taxpayer, including Isbrandtsen, and every taxpayer in Nebraska and Ohio and any of your other States, who never saw an ocean ship and probably never saw an ocean, are contributing dividends to the stockholders of these handful of people who operate ships on the foreign oceans.

Do not get mistaken, gentlemen, that the foreign ocean trade is a very important thing in the economy of the United States. Much of the talk as I was saying would not be agreed to by Isbrandtsen, but I say this because they are in the business and I am only a lawyer. Of the \$185 billion or the \$200 billion a year that we aim at, the whole foreign shipping industry does not amount to \$5 billion a year and

of our 65 million persons employed in the country only about 60,000 tops ever are employed in the shipping industry, so do not think this country is going to collapse because these foreign-dominated conferences are going to be taken to turn for using this system that is so fundamentally un-American.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. Mr. Chairman.

Mr. O'CONNOR. May I finish there? We have an immediate situation. We are going to spend a few hundred million dollars opening up the Great Lakes for big ships. At present there are about 25 lines operating in the Great Lakes, all foreign lines, no American line operators. The American lines including Isbrandtsen, United States Lines, Grace, and others, have indicated an inclination to go in there and operate in there. These conferences have said to them, one of the chairmen testified in one of the hearings—"Well, you had better join up the conference or else." They have applied to the Board already before they start in the Great Lakes. They do not use the dual rate system now. They have applied for the right to use the dual rate system solely to hook in the American lines that may go in there and make them go in there subject to those foreign lines and there will be 25, 30 foreign lines as against probably 3 American lines. If they could not use the dual system they would be on their own.

I know the answer, the stock answer to that is, "Well, the foreign lines could cut the heart out of the rates so that they would ruin American competition."

I have said any country that cannot protect its exporters, importers and consumers from extortion by foreign steamship lines is not fit to continue as a country.

We can control our ports. We can protect our own people.

I might say it is about time we did in some respects.

Mr. MAILLIARD. Mr. O'Connor, you, in effect, have told us that these conference rates are set exorbitantly high in a sort of collusion arrangement which in effect disregards our subsidy of American subsidized lines. Do not those rates have to be approved by the Maritime Board?

Mr. O'CONNOR. No, no. The Maritime Board in spite of what has been said here today has consistently taken the position—and I do not question it generally—that they have nothing to do with fixing rates. They do have power which they timidly have expressed at times that if the rate becomes unreasonably high or unreasonably low and is a detriment to the commerce of the United States, in the language of the act, they might do something; Congress originally in the 1916 act proposed to give the fixing of rates to the maritime authorities like under ICC in the railroads, but they abandoned that finally as impractical.

These conference lines can charge about anything they want to. The rate war, as I said, in the Pacific went on for 5 years and in spite of it being brought to the attention of the Federal Maritime Board that those lines were carrying freight below the cost of handling, the longshore costs, and that was interfering with the commerce of the United States, the Board did nothing.

Mr. MAILLIARD. Still, is it not a fact that the conference rates have to be approved by the Board?

Mr. O'CONNOR. No; it is not. That is not a fact. They do not have to be approved by the Board. They are not submitted for approval

by the Board. They are filed with the Board as information to the public.

Mr. MAILLIARD. In other words, the Board would not act unless somebody complained?

Mr. O'CONNOR. No, absolutely not.

Mr. MAILLIARD. Well, does anybody complain?

Mr. O'CONNOR. Well, as I said, it has been pretty generally established by parliamentary investigations that the average shipper better not complain.

Mr. MAILLIARD. If they are charging what in effect is twice as much as they ought to charge, which is about what you have told us, at least twice as much, I can hardly believe that nobody would complain.

Mr. O'CONNOR. Well, some of the shippers look around for an independent if there is one who will give them a lower rate. Now, you must always remember that independents like Isbrandtsen, the Board has found and nobody has questioned that they have always charged compensatory rates, never any rates that were not fair compensation for their carriage, and they are good operators. Everybody would admit that.

So that, when the conference system like in the Pacific was charging twice as much as was fair compensatory rates according to the claim of the shippers, despite Isbrandtsen's willingness to come to 50 percent of those rates, that was just extortion and extortion of our people, most of it, and the producer. Nobody has said anything about the producer and how he is affected by this thing.

For the 24 American shipping lines that are in conferences which use the dual rate system, there are thousands, 20,000, 30,000, 40,000 of shippers in this country that are affected by this situation and, of course, there are the millions of consumers who ultimately pay.

Mr. MAILLIARD. Getting back to this question of conference rates being exorbitant, I cannot quite figure out the economics of it. If Isbrandtsen, as an independent not subsidized, can go in and perform the service at 50 percent of the conference rate and make a profit which I presume they are in business to do, I do not understand why the other lines are not making so much money that all of the subsidies would be pouring right back into the Treasury. How could they avoid it if what you say is true?

Mr. O'CONNOR. Well, you must remember that that was just in the Pacific trade. Probably 50 percent would not hold in other trades.

The CHAIRMAN. I want to answer this because I am interested because if what you say is true then Maritime is negligent in their duty to recapture all over 10 percent.

Mr. O'CONNOR. No; I do not think that.

The CHAIRMAN. Well, Mr. Mailliard has developed it on your statement where you say they are 50 percent exorbitant.

Mr. O'CONNOR. They were for years in the Pacific trade.

The CHAIRMAN. Then all they got in subsidy would be returnable in profits?

Mr. O'CONNOR. You must remember when the Government steps in and subsidizes—

The CHAIRMAN. Let us not get away from it.

Mr. O'CONNOR. I am attempting to answer it.

When the Government steps in and subsidizes somebody, that has a certain tendency in human nature to make those people soft, and

they do not often try as hard as the independent fellow who is on his own.

Now, I hear a lot of talk and comment behind me.

The CHAIRMAN. I do not understand, then, why Isbrandtsen wants a subsidy. I just cannot get these two things together.

Mr. O'CONNOR. I expected that to follow.

The CHAIRMAN. Sir?

Mr. O'CONNOR. I expected that to follow.

The CHAIRMAN. I have a lot of respect for you and your ability.

Mr. O'CONNOR. Thank you.

The CHAIRMAN. I have known you a long time but these things just do not fit together in my thinking.

Mr. O'CONNOR. It is not easy to put together the puzzle, and I say this is a puzzle that has been thrown in your lap with the wrong slant on it to begin with. I will answer that question. Isbrandtsen is the American-flag operator around the world. It is competing not only with foreign lines; it is competing with American subsidized lines and it has generally been accepted now that no American-flag operator can operate in most trades without a subsidy.

Now, that is due to the cost of operation principally, the cost of operating the ship each day.

You must remember you have to get freight as well as a subsidy. Somebody said here today that the subsidy, by itself, would not provide for your profitable operation and that, of course, added to the pressure like this rate war in the Pacific which was started by that conference line which was up before the Supreme Court and which starting has been proved because the conference members were cutting each other's throats with rebates, and kickbacks, that cost Isbrandtsen millions of dollars because Isbrandtsen could not, even as an independent, go down to \$6 a ton when a 50 percent rate would have meant 15 or 20 dollars a ton.

Then, of course, you must remember the chief purpose—and Mr. Chairman, may I have your attention on this?

The CHAIRMAN. Sir?

Mr. O'CONNOR. The chief purpose of applying for a subsidy these days is to be in a position to replace your ships which everybody has to do now.

As you know, the unsubsidized operator in spite of legislation passing the House is not permitted like the subsidized operator to put its earnings aside to provide for the replacement of its ships so that at the end of a cycle, which is coming now, 20 years after these ships were built, he is faced with not being able to finance. There is no private financing of shipbuilding. So that is the big difference. That is what Isbrandtsen would tell you. We are asking for subsidy principally so that we can replace our ships. We bought these ships from the Government and expressed our intention to use them in the American trade. The Government encouraged us to do it.

Now we come along and find these conferences of foreign lines and just a sprinkling of American lines putting us out of the business.

The CHAIRMAN. Do you mean to say that he has used up all the benefit that he derived when he bought these ships under the Ship Sales Act and that is where the pinch comes today?

Mr. O'CONNOR. There is nothing to that.

The CHAIRMAN. You lead me to believe that?

Mr. O'CONNOR. There is nothing to use up. He is faced as every American operator is with the fact that he cannot replace his ships without the subsidy.

The CHAIRMAN. Go ahead, Mr. Mailliard.

Mr. MAILLIARD. I still cannot reconcile what you have told us. If what you have told us today is true in its entirety, and you have made some very interesting presentations, but they do not seem to be backed up with details that I can get through my head, I do not see how the subsidized lines in particular that belong to the conferences could have avoided getting disgustingly rich if the conditions that you described are actually true.

Mr. O'CONNOR. It is the foreign lines that get filthy rich. The subsidized lines could only get filthy rich by this margin of subsidy they get after they get these high rates that are charged.

Mr. MAILLIARD. But if the subsidy gives them parity with their foreign competition, then they ought to be making just as much profit per ton as the foreign competitor.

Mr. O'CONNOR. Oh, no. Let me give you a concrete example, which may help clear it.

In this North Atlantic trade from here to Europe and back, for years the United States Lines has operated, probably the principal American operator, who testified here today. They are a subsidized line.

Waterman has also operated a nonsubsidized line.

By reason of the conference setup, both Waterman and the United States Lines had to charge the same rates so that the nonsubsidized line Waterman got no higher rates than United States Lines.

Mr. MAILLIARD. Did they provide an equal service?

Mr. O'CONNOR. Well, substantially, the same kind of ships. Everybody uses the same kind of ships, the same frequency of sailing.

Mr. MAILLIARD. Is it not true that the subsidized lines are required to maintain a regularity of performance year round regardless of the traffic?

Mr. O'CONNOR. The independent better maintain regularity equal to subsidized lines or he just does not have any business, and most of the independents have regular sailings ever 2 weeks or so on the trade route. There is no irregularity about independent liner services like Isbrandtsen or States Marine or any of those other or the unsubsidized line, Waterman.

Mr. MAILLIARD. If they are operating in competition with the subsidized operator giving equivalent service in equivalent type ships and making money, I cannot understand why the subsidized operators are not making a mint.

Mr. O'CONNOR. Well, they make plenty of money. They are probably not as thrifty as the independent.

Of course, Waterman now has been forced to apply for a subsidy, too, on the basis of replacing shipments. It just has to.

Mr. MAILLIARD. In other words, they did make money at a time when there was a world shortage of shipping but now that that no longer exists, the independents are being forced to apply for subsidy. Is that not true?

Mr. O'CONNOR. I think the big reason they must apply is to be able to replace their ships. The Government finances the construction

of ships to a great extent, and will underwrite insurance, mortgages and so forth, so that they could not get reserves privately and the subsidized lines, as I said, can pile up year after year, without having to pay out certain amounts for taxes, for the replacement of ships which is very often everything they take in.

The independent line has been forbidden that right.

I think the House has passed a bill once, maybe twice, but it was defeated in the Senate, permitting the nonsubsidized lines to pile up these reserves solely for the purpose of replacing their fleet. It would be just as beneficial to the American merchant marine.

Mr. MAILLIARD. If there were such a bill on the books, would Isbrandtsen not be applying for a subsidy?

Mr. O'CONNOR. I do not know. It might not. It was because of the defeat of such legislation that Isbrandtsen, Waterman, States Marine, Isthmian, and other nonsubsidized lines are now applying for subsidy to get an opportunity to replace their ships.

Mr. MAILLIARD. Mr. Chairman, I do not want to prolong this unduly but I am still confused.

The CHAIRMAN. I overlooked you, Mr. Dellay. Do you have questions?

Mr. DELLAY. I have no questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. Pelly?

Mr. PELLY. Mr. O'Connor, unfortunately I was called out of the committee so that I did not hear your testimony this morning. When you first came in this afternoon you referred to the fact that the agricultural interests of this country were concerned about these conference rates.

For my information, would you tell me if the individual farmers themselves are shipping on our lines or is it the Federal Government financing mutual security and that type of thing?

Mr. O'CONNOR. The individual farmers are shippers to a great extent. At one of these hearings not long ago, which is now pending in court, a proceeding before the Board brought by the Department of Agriculture to have the system declared illegal, representatives of the farm organizations testified there in behalf of farmers of the country against this dual rate system.

Mr. PELLY. You are not answering my question.

I want to get the information basically as to what the volume would be by the individual farmers as against the Federal Government.

Mr. O'CONNOR. Well, I understand it is very considerable, according to the testimony. These farm organizations represent individual farmers.

Mr. PELLY. You mean cooperative groups?

Mr. O'CONNOR. Yes, the National Grange and the farm cooperatives and this, that, and the other. There are a half a dozen of them. Then, of course, the Department of Agriculture, by itself, is a tremendous shipper of agricultural products. That is due, principally, recently, to the Government-aid programs and so forth. But the individual farmer has spoken against it through his representatives in these farm organizations.

Mr. PELLY. Are there, to your knowledge, any contracts based on the dual system with individual farm organizations; in other words, the

agreement whereby they would continue to ship their agricultural products over conference lines which are signed with farm organizations themselves?

Mr. O'CONNOR. It would not be signed with the farm organizations. It would be signed with the individual shipper and, undoubtedly, they are complaining about it. There must be thousands of shippers who have signed up in order to get this lower rate. They just have to sign up to get the lower rate, or they are put out of business with their competitors.

Mr. PELLY. In this case, where do the foreign countries get their dollars to buy the products? I thought it was all on the Government-financed basis and that is where the counterpart funds came in.

Mr. O'CONNOR. I understand that some of the farm witnesses are going to be here tomorrow and could probably enlighten you on that, but they would not be in these cases unless they were influenced, personally, as shippers.

Mr. PELLY. I will ask the farm representatives.

I have just one other question about which I am curious.

Have you any statistics, or could you get statistics, to show where the conference companies have paid exorbitant dividends? I think you said they paid dividends to the same amount of the subsidy.

Mr. O'CONNOR. Sometimes.

Mr. PELLY. Could you furnish any documentation?

Mr. O'CONNOR. I have seen in the papers, sometimes, where United States Lines or Moore-McCormack have declared a dividend of about \$4 million for instance.

Mr. PELLY. That does not mean anything unless you know how much their investment is.

Mr. O'CONNOR. No; I only compared it with the amount they received in subsidy. Down below, in the statement you would see that they received just about that amount in subsidy that year from the Government.

Mr. PELLY. I am thinking of one stock that I had watched for years, the stock of a Pacific company that operates in the Pacific. As far as I know, it has never gone up in value. It has no interest for investors at all. It has been just listed at about the same price for years. I cannot believe that, with these exorbitant rates, they could not have paid big dividends and advanced in price. I would like to know something about that.

Mr. O'CONNOR. The American lines do not get exorbitant rates. It is the foreign lines that get the exorbitant rates by reason of the permission to use this dual-rate system.

I say that, when the American ceiling is taken as a rate for all the conference members, that is usually a fair ceiling for American operators. I am not complaining about that. The American operator gets \$25 from San Francisco to Japan. It is, probably, reasonably compensatory. But for the foreigner to get \$25 at the same time, when he could carry it for half or less, I say only results from the use of this dual-rate system.

Mr. PELLY. Is not the only answer to that that, in order to preserve an American merchant marine, it is necessary to have a certain level

under which the American lines would otherwise go broke and we would lose those ships?

Mr. O'CONNOR. I do not know whether you are actually preserving the American merchant marine. You have a thousand ships operating and, remember, the people who are crying on your shoulder do not operate more than 300 of them.

Mr. PELLY. You say that the freight rates are not exorbitant, based on the cost of our ships; that they are exorbitant for foreign. The answer seems to me to be that, if you do away with the dual system, then your foreign lines are going to take over the business and your American lines are going out of business and there is no merchant marine.

Mr. O'CONNOR. Well, that remains to be seen.

Mr. PELLY. I do not want to see it.

Mr. O'CONNOR. I do not believe you would ever.

Mr. PELLY. I think we are entitled to an interim period.

Mr. O'CONNOR. I do not believe you would ever see it. That bugaboo has been held over your head. We are not talking about an interim period. You may, in good faith, intend it as an interim. This is the last stall which will cement the thing after the courts have spoken.

Mr. PELLY. I think that, certainly, the Congress has the right to allow a reasonable length of time. Even the Supreme Court did that with segregation.

Mr. O'CONNOR. Did Congress step in and do it?

Mr. PELLY. I think somebody did.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Are you testifying for or against this bill, H. R. 12751?

Mr. O'CONNOR. I am testifying against it.

Mr. DINGELL. Do you have any feelings on the relationship of this bill and the recent decision of the Supreme Court outlawing dual rates? Maybe I missed that, Mr. Chairman.

Mr. O'CONNOR. Well, of course, I have said at the beginning this morning that all these similar bills are, in effect, declaring a moratorium on the effectiveness of this decision of the Supreme Court.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. O'CONNOR. Mr. Chairman, this morning something was said about these contracts which the shippers sign, tying themselves up to the dual-rate system. I have 3 forms in 3 different conferences, which I would like to file with the committee for the information of anybody who might be interested in it. They run from a 50-percent penalty to a 100-percent penalty for any violation of the contract.

The CHAIRMAN. All right.

Mr. O'CONNOR. Thank you very much.

The CHAIRMAN. They will be placed in the record.

(The documents referred to follow :)

EXHIBIT 12

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN

AGREEMENT FOR THE CARRIAGE OF FREIGHT

Contract No. -----

This Agreement made between ----- hereafter called the Shipper, and the Members of the Trans-Pacific Freight Conference of Japan, hereinafter called the Carriers, provides as follows:

1. The Shipper agrees to forward or cause to be forwarded by vessels of the Carriers all shipments made directly or indirectly by him, his agents, subsidiaries, associated or parent companies, from Japan, Korea and Okinawa to Hawaii and Pacific Coast ports of the United States and Canada, whether such shipments are made C. I. F., C. & F., F. O. B., ex godown or by any other terms.

In agreeing to so confine the carriage of its (their) shipments to the vessels of the Carriers, the Shipper hereby promises and declares it is the intent and purpose to do so without evasion or subterfuge either directly or indirectly by any means, including the use of intermediaries or subsidiaries.

2. The Carriers agree to carry the Shipper's cargoes so far as their regular services are available, at the Contract rates set out in the Tariff of the Trans-Pacific Conference of Japan. Rates of freight are subject to reasonable increase. The Carriers undertake to give the Shipper notice of increase by letter, by general posting of revisions of tariff rates in the office of the Secretary, Trans-Pacific Freight Conference, or by press announcement thereof. Increases shall not become effective until the expiration of the calendar month during which notice is given and of the two calendar months next following.

For the purpose of giving the Shipper notices of all changes in rates, the Shipper shall furnish the Conference Secretary a list of commodities in which the Shipper is interested, and if requested, the Shipper shall thereafter receive notice of change of rates applicable to said commodities. Should the Carriers during the period of this Agreement reduce rates on any commodity on which Contract rates are applicable, the Shipper shall be given the full benefit of such reduced rates during the period same remain in effect.

3. All Conference rules, regulations, terms and conditions in the Tariff of the Trans-Pacific Freight Conference and the respective addenda current at the time of shipment of goods are part of this Agreement.

4. The Carriers undertake to maintain a shipping service which shall be adequate to meet the reasonable requirements of the commerce of Japan moving in the trade specified in Paragraph 1 above. The Shipper may select any vessel in the regular services of the Carriers subject only to mutual agreement as to quantity per vessel and to ability of vessel to carry.

If the Carriers do not furnish space after the Shipper applies therefor, the Shipper may secure space elsewhere without prejudice, provided he first notifies the Secretary, Trans-Pacific Freight Conference, Tokyo, Japan, of his requirement for space and provided the Secretary does not notify him within seven (7) days thereafter, excluding Sundays and holidays, of the availability of space within the ensuing thirty (30) days period.

5. If the Shipper shall make or cause to be made, any shipment in violation of this Agreement, the Shipper shall pay as liquidated damages to the Carriers fifty percentum (50 percent) of the amount of freight which the Shipper would have paid had such shipment been made in a vessel of the Carriers at the Contract rate currently in effect. Upon failure of the Shipper to pay liquidated damages within thirty (30) days after receipt of demand from the Carriers, the Carriers shall terminate the Shipper's right to the Contract rates until the Shipper pays to the Carriers the amount due. If the Shipper violates this Agreement more than once in any period of twelve (12) months, the Carriers shall cancel this Agreement by serving written notice upon the Shipper. If the Agreement is thus cancelled, the Carriers shall refuse to enter into a new Agreement with the Shipper until ninety (90) days after any unpaid liquidated damages due to the Carriers have been paid in full.

The Shipper shall, upon request, furnish to the Carriers full and complete information with respect to any shipment made, or cause to be made, by the Shipper in the trade covered by this Agreement.

6. In case of urgency or other special circumstances the Secretary shall permit shipments by other means than a vessel of a Carrier. If the Shipper submits written proof satisfactory to the Secretary of the Trans-Pacific Freight Conference that a foreign buyer on an F. O. B. or F. A. S. shipment from Japan has designated a non-Conference vessel for a shipment, then such shipment will be exempt from this Agreement. The Carriers may thereafter deny Contract rates on subsequent cargo consigned to or by such foreign buyer in vessels of the Carriers to destinations specified under Paragraph 1 above unless such foreign buyer shall first subscribe to a contract with the Carriers.

7. Shipments under this Agreement are subject to all the terms and conditions of the respective Carrier's engagement note, permit dock receipt and bill of lading in use by the Carrier when shipments are tendered.

8. The Carriers may cancel this Agreement or suspend service in the event of hostilities or threat thereof which reasonably may be anticipated to affect the trade covered by this Agreement.

9. This Agreement may be terminated by either Party by notice in writing and such termination shall become effective three (3) calendar months after receipt by the other Party of such written notice.

10. Any controversy, claim or dispute arising out of or relating to this Agreement which cannot be settled amicably shall be settled by arbitration in Tokyo, Japan. Each of the interested parties shall within seven (7) days of the filing of a submission or demand for arbitration nominate one arbitrator each who, failing agreement, shall appoint a third arbitrator and the award of the majority shall be binding upon the parties and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

11. Each Member of the Conference is responsible for its own part only in this Agreement. Both the Shipper and the Carriers promise and declare they will faithfully perform and carry out all the obligations and promises on their part to be performed in order to obtain the maximum mutual benefits hereunder.

The Carriers which are Members of the Trans-Pacific Freight Conference of Japan at the time of execution of this Agreement are listed on the reverse side of this Agreement.

Should additional Carriers become Members of the Trans-Pacific Freight Conference after the date of this Agreement, the terms of this Agreement shall apply fully to such Carrier from the date of Membership; should any Carrier cease to be a Member of such Conference, all future rights under this Agreement of such Carrier shall thereupon terminate.

Executed this _____ day of _____, 19__.

Shipper's Address(es) :

(Shipper)

By -----
(Title)

TRANS-PACIFIC FREIGHT CONFERENCE OF
JAPAN,

[Revenue Stamp]

Secretary

Port -----

PARTICIPATING CARRIERS

1. American Hawaiian Steamship Co.
2. American Mail Line, Ltd.
3. American President Lines, Ltd.
4. Barber-Wilhelmsen Line; Wilhelm-sens Dampskibsaktieselskab
A/S Den Norske Afrika-og Australielinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart IV
A/S Tankfart V
A/S Tankfart VI
Skibsaktieselskapet Varild
Skibsaktieselskapet Marina
Aktieselskabet Glitre
Dampskibsinteresentskabet Garonne
Skibsaktieselskapet Sangstad
Skibsaktieselskapet Solstad
Skibsaktieselskapet Siljestad
Dampskibskaktieselskabet International
Skibsaktieselskapet Mandeville
Skibsaktieselskapet Goodwill
(as one party only)
5. Canadian Pacific Steamships Ltd.
6. Daido Kaiun Kaisha, Ltd.
7. De La Rama Lines:
The De La Rama Steamship Co., Inc.
The Swedish East Asia Co., Ltd.
The Ocean Steam Ship Co., Ltd.
The China Mutual Steam Navigation Co., Ltd.
Nederlandsche Stoomvaart Maatschappij "Oceaan", N. V.
(as one party only)
8. The East Asiatic Co., Ltd.
9. Ivaran Lines-Far East Service:
Skibsaktieselskapet Igadi
Aktieselskapet Ivarans Rederi
Aktieselskapet Lise
(as one party only)
10. Kawasaki Kisen Kaisha, Ltd.
11. Knutsen Line:
Dampskibsaktieselskapet Jeanette Skinner
Skibsaktieselskapet Pacific
Skibsaktieselskapet Marie Bakke
Dampskibsaktieselskapet Golden Gate
Dampskibsaktieselskapet Lisbeth
(as one party only)
12. Kokusai Line
Kokusai Kaiun Kaisha, Ltd.
Iino Kaiun Kaisha, Ltd.
Mitsubishi Kaiun Kaisha, Ltd.
Nissan Kisen Kaisha, Ltd.
Toho Kaiun Kaisha, Ltd.
(as one party only)
13. Mitsui Steamship Co., Ltd. (Mitsui Line)
14. A. P. Moller-Maersk Line
Dampskibsselskabet af 1912
Aktieselskab
Aktieselskabet Dampskibsselskabet Svendborg
(as one party only)
15. Nippon Yusen Kaisha
16. Osaka Shosen Kaisha, Ltd.
17. Pacific Far East Line, Inc.
18. Pacific Orient Express Line
Skibsaktieselskapet Norheim
Skibsaktieselskapet Vito
Skibsaktieselskapet Kirkoy
Skibsaktieselskapet Skagerak
Transatlantic Steamship Company
(as one party only)
19. Pacific Transport Lines, Inc.
20. Shinnihon Steamship Co., Ltd.
21. States Marine Lines
States Marine Corporation
States Marine Corporation of Delaware
(as one party only)
22. States Steamship Co.
23. Waterman Steamship Corp.
24. Yamashita Steamship Co., Ltd.

EXHIBIT J

JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE
AGREEMENT FOR THE CARRIAGE OF FREIGHT

Contract No. -----

This agreement made between -----, hereinafter called the Shipper, and the Members of the Japan-Atlantic and Gulf Freight Conference, hereinafter called the Carriers, provides as follows:

1) The Shipper agrees to forward or cause to be forwarded by vessels of the Carriers all shipments made directly or indirectly by him, his agents, subsidiaries, associated or parent companies, from Japan, Korea and Okinawa to United States Gulf Ports and Atlantic Coast Ports of North America, whether such shipments are made C. I. F., C. & F., F. O. B., ex godown or by any other terms.

2) The Carriers agree to carry the Shipper's cargoes so far as their regular services are available, at the Contract rates set out in the Tariff of the Japan-Atlantic and Gulf Freight Conference. Rates of freight are subject to reasonable increase. The Carriers undertake to give the Shipper notice of increase by letter, by general posting of revisions of tariff rates in the office of the Secretary, Japan-Atlantic and Gulf Freight Conference, or by press announcement thereof. Increases shall not become effective until the expiration of the calendar month during which notice is given and of the two calendar months next following.

For the purpose of giving the Shipper notices of all changes in rates, the Shipper shall furnish the Conference Secretary a list of commodities in which the Shipper is interested, and the Shipper shall thereafter receive notice of change of rates applicable to said commodities. Should the Carriers during the period of this Agreement reduce rates on any commodity on which Contract rates are applicable, the Shipper shall be given the full benefit of such reduced rates during the period same remain in effect.

3) All Conference rules, regulations, terms and conditions in the Tariff of the Japan-Atlantic and Gulf Freight Conference and the respective addenda current at the time of shipment of goods are part of this Agreement.

4) The Carriers undertake to maintain a shipping service which shall be adequate to meet the reasonable requirements of the commerce of Japan, Korea and Okinawa moving in the trade specified in Paragraph 1 above. The Shipper may select any vessel in the regular services of the Carriers subject only to mutual agreement as to quantity per vessel and to ability of vessel to carry.

If the Carriers do not furnish space after the Shipper applies therefor, the Shipper may secure space elsewhere without prejudice, provided he first notifies the Secretary, Japan-Atlantic and Gulf Freight Conference, Tokyo, Japan, of his requirement for space and provided the Secretary does not notify him within three (3) days thereafter, excluding Sundays and holidays, of the availability of space on Carriers' vessels within the ensuing fifteen (15) day period.

(5) If the Shipper shall make or cause to be made, any shipment in violation of this Agreement, the Shipper shall pay as liquidated damages to the Carriers fifty per centum (50%) of the amount of freight which the Shipper would have paid had such shipment been made in a vessel of the Carriers at the Contract rate currently in effect. Upon failure of the Shipper to pay liquidated damages within thirty (30) days after receipt of demand from the Carriers, the Carriers shall terminate the Shipper's right to the Contract rates until the Shipper pays to the Carriers the amount due. If the Shipper violates this Agreement more than once in any period of twelve (12) months, the Carriers shall cancel this Agreement by serving written notice upon the Shipper. If the Agreement is thus cancelled, the Carriers shall refuse to enter into a new Agreement with the Shipper until any unpaid liquidated damages due to the Carriers have been paid in full.

The Shipper shall, upon request, furnish to the Carriers full and complete information with respect to any shipment made, or caused to be made, by the Shipper in the trade covered by this Agreement.

(6) Notwithstanding any other provision of this Agreement, if the Shipper submits written proof satisfactory to the Secretary of the Japan-Atlantic and Gulf Freight Conference that a foreign buyer on an F. O. B. or F. A. S. shipment from Japan has designated a non-Conference vessel for a shipment, then such shipment will be exempt from the Agreement. The Carriers shall thereafter deny Contract rates on subsequent cargo consigned to such foreign buyer on an F. O. B. or F. A. S. basis, in vessels of the Carriers to destinations specified under Para-

graph 1 above unless such foreign buyer shall first subscribe to a contract with the Carriers.

(7) Shipments under this Agreement are subject to all the terms and conditions of the respective Carrier's engagement note, permit, dock receipt and bill of lading in use by the Carrier when shipments are tendered.

(8) The Carriers may cancel this Agreement or suspend service in the event of hostilities or threat thereof which reasonably may be anticipated to affect the trade covered by this Agreement.

(9) This Agreement may be terminated by either Party by notice in writing and such termination shall become effective three (3) calendar months after receipt by the other Party of such written notice.

(10) Any controversy, claim, or dispute arising out of or relating to this Agreement which cannot be settled amicably shall be settled by arbitration in Tokyo, Japan. Each of the interested parties shall within seven (7) days of the filing of a submission or demand for arbitration nominate one arbitrator each who, failing agreement, shall appoint a third arbitrator and the award of the majority shall be binding upon the parties and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(11) Each Member of the Conference is responsible for its own part only in this Agreement. Both the Shipper and the Carriers promise and declare they will faithfully perform and carry out all the obligations and promises on their part to be performed in order to obtain the maximum mutual benefits hereunder.

The Carriers which are Members of the Japan-Atlantic and Gulf Freight Conference at the time of execution of this Agreement are listed below.

Should additional Carriers become Members of the Japan Atlantic and Gulf Freight Conference after the date of this Agreement, the terms of this Agreement shall apply fully to such Carrier from the date of Membership; should any Carrier cease to be a Member of such Conference, all future rights under this agreement of such Carrier shall thereupon terminate.

(12) The Shipper will indicate for the information of the Conference, the approximate annual tonnage to be moved under this Agreement: Minimum tonnage (2000 lbs. or 40 cu. ft.) Maximum tonnage (2000 lbs. or 40 cu. ft.)

(13) The Carriers which are Members of the Japan-Atlantic and Gulf Freight Conference are as follows:

Executed this _____ day of _____ 19_____

Shipper's Address(es) :

(Shipper)

By _____

(Title)

[Revenue Stamp]

JAPAN-ATLANTIC AND GULF FREIGHT
CONFERENCE,

Port _____

Secretary

FAR EAST FREIGHT AGREEMENT

Contract No. _____

Memorandum of agreement, made the _____ day of _____, 19____, by and between _____, hereinafter called the Shipper, and Members of Far East Conference, designated below and hereinafter called the Carriers, it being understood and agreed to by the Shipper and by the Carriers that if the Far East Conference add any additional line or lines to their membership, such line or lines shall thereby become party to this agreement, and the Shipper shall have the right to request shipping space of such line or lines as in this agreement provided; and should any line or lines cease to be members of said Conference, all future rights under this agreement of such line or lines, and of the Shipper as to any such line or lines, shall thereupon terminate.

1. The Shipper, in consideration of the rates and other conditions stated herein agrees to forward by vessels of the Carriers all shipments made, directly or indirectly, by him, his agents, subsidiary, associated and/or parent companies and shipped from United States ports, excepting, however, Pacific Coast ports, to ports in Japan, Korea, Formosa, Siberia, Manchuria, China, Indo-China and Philippine Islands.

The commodities involved, the estimated quantities and the rates and conditions to govern are shown on the attached supplement or supplements. It is mutually understood and agreed that if shipper should subsequently forward any commodity other than those shown on attached supplement or supplements, said shipments are considered to be part of this agreement, and therefore entitled to the lowest rate then in effect on such commodity without requiring shipper to conclude a supplemental agreement with the Carriers.

2. The rates of freight named or provided for hereunder are subject to being increased reasonably from time to time by the Carriers giving the Shipper written notice thereof not less than ninety (90) days in advance of the increase. Increases shall be deemed accepted by the Shipper unless he notifies the Carriers to the contrary within thirty (30) days from the receipt of said notice. Within said thirty days, the Shipper may give the Carriers written notice of cancellation of this contract as of the effective date of the increased rate or rates, subject, nevertheless, to the option on the part of the Carriers, declarable not less than thirty days prior to the effective date of the increase in rate or rates, either to accept the cancellation, or to continue this contract in force under the rates in effect at the date when the notice of increase shall have been given. Recognizing that it will be impracticable for the Carriers to give notices of increases of all rates to all contracting shippers, it is agreed that the Carriers shall furnish to the Shipper notices of all increases in rates applicable only to the commodity or commodities specified in the attached supplement or supplements and such additional commodity or commodities as to which the Shipper shall have given written notice to the Chairman of the Far East Conference of his intention to ship.

Should the Carriers, during the term of this agreement, reduce rates on any commodities which are covered by the attached supplement or supplements, or which are mentioned in any notice given by the Shipper to the Carriers as aforesaid, the Shipper shall be given the full benefit of such reduced rates during the period the same remain in effect; provided, however, that nothing herein contained is intended to preclude the Carriers from furnishing transportation for goods not intended for commercial or industrial use, shipped by governments, governmental agencies, or public or private, national or international, charitable, eleemosynary or humanitarian agencies, or religious or missionary societies, at rates lower than the rates herein provided for; and if the Carriers do so carry at such lower rates, the Shipper shall have no right hereunder to require the Carriers to transport for the Shipper at such lower rates.

3. The Carriers undertake, throughout the period of this Agreement, to maintain a steamship service which shall, so far as concerns the frequency of sailings and the carrying capacity of their vessels, be adequate to meet all of the reasonable requirements of the commerce of the United States moving in the trades specified in Paragraph 1 hereof; and the Carriers further agree that, subject to the availability of unbooked space in the vessels of the Carriers at the time when the Shipper applies therefor, the vessels of the Carriers shall, subject to the provisions of Paragraph 5 hereof, transport the cargoes of the Shipper in the aforesaid trade, upon the terms and conditions herein set forth.

The Shipper shall have the option of selecting any of the vessels operated by any of the respective Carriers who at time of shipment are Members of the Far East Conference, provided that the required space to port of destination is available in the vessels selected either direct or with transshipment at the time when the Shipper makes application therefor. The Shipper shall be required to reach agreement with the respective Carriers as to the quantity to be shipped per vessel, port or ports of loading, port or ports of discharge, and to apply for freight space as long prior to the vessel's advertised sailing date as practicable. If the Carriers do not furnish space after the Shipper duly applies therefor, the Shipper shall be free, with respect to such shipment, to secure space elsewhere without prejudice to his right to future shipments under this agreement, provided that the Shipper first notifies the Chairman of the Far East Conference at New York and allows the Chairman forty-eight (48) hours from the receipt of such notice to confirm that such space is not available.

4. If, at any time, the Shipper shall make any shipment or shipments in violation of any provision of this Agreement, the Shipper shall pay liquidated damages to the Conference in lieu of actual damages which would be difficult or impracticable to determine. Such liquidated damages shall be paid in the amount of freight which the Shipper would have paid had such shipment or shipments moved via a Conference Carrier computed at the contract rate or rates currently in effect. Failure of the Shipper to pay liquidated damages within thirty days after the receipt of notice from the Conference that such liquidated damages are due and payable shall be cause for the Conference to terminate the Shipper's right to the contract rates until the Shipper pays to the Conference the amount due. In the event the Shipper violates this contract more than once in any period of twelve months, the Conference may cancel this contract by serving written notice of such cancellation upon the Shipper and notifying the Federal Maritime Board of such action. If the contract is cancelled for violation thereof as provided herein, the Conference may refuse to enter into a new contract with the Shipper until any unpaid liquidated damages due to the Conference have been paid in full.

In order that the Conference may determine the existence or non-existence of a violation hereof, the Shipper shall, upon request, furnish to the Conference full and complete information with respect to any shipment or shipments made by such Shipper in the trade covered by this Agreement.

5. Shipments under this Agreement are subject to all the terms and conditions contained in the respective Carrier's engagement note, permit, dock receipt and/or regular form of bill of lading, in use by the Carrier when shipments are tendered.

6. In the event of any hostilities breaking out or threatening to break out, in which the United States and/or Great Britain and/or Japan and/or China and/or Indo-China and/or Russia and/or their Colonies are involved, or by which the Carrier's interests are affected, the Carriers have the option of cancelling this agreement.

7. In compliance with Section 16 of the "Shipping Act, 1916," payment by the Carriers and the acceptance of freight brokerage by the broker is with the strict understanding that no part of the brokerage thus collected shall revert to the Shipper, or to the consignee, and that the business of the broker is in no sense subsidiary to or affiliated with that of the Shipper or the consignee.

8. Any disputes between the parties hereto arising out of this Agreement or involving the interpretation or effect thereof, shall be referred to a board of three arbitrators, one of whom shall be appointed by the Shipper, the second of whom shall be appointed by the Carriers, and the third of whom shall be appointed by the two arbitrators appointed as aforesaid. The decision of any two of said arbitrators with respect to any matter submitted to them as aforesaid, including, but without limitation, the amount of damages arising from any breach of this agreement, shall be final and binding upon the Shipper and the Carriers, and, for the purpose of enforcing any such award, the same shall be made a rule of the Court.

9. This Agreement, subject to the conditions set forth herein, may be terminated upon ninety (90) days written notice by the Shipper, or by all of the Carriers, or by any one or more of the Carriers (in which case such cancellations shall be effective only as to the notifying Carriers). If this Contract shall be terminated as to some, but not all, Carriers, the Shipper shall be at liberty to ship by such terminating Carriers so long as such terminating Carrier or Carriers remain members of the Far East Conference without thereby violating this Contract.

10. In the event of threat, existence or continuance of any present or future war or war-like conditions or hostilities or civil commotion, or measures taken by any Government in consequence thereof or in connection therewith, or the existence or continuance of conditions which, in the opinion of any one or more of the Carriers, indicates that there is a danger of any of the foregoing, which, may impede, obstruct or delay, or render impossible or hazardous performance of its or their obligations due to the requisition, seizure or loss of any of the vessels of any one or more of the Carriers, or any other cause whatsoever whether similar or dissimilar, or which, in the sole judgment of any one or more of the Carriers, may directly or indirectly result in the imposition upon it or them of any undue financial or other hardship or burden in the performance of its or their obligations, any one or more of the Carriers shall have the option of forthwith cancelling this Agreement as to it or them. If this Agreement shall be cancelled as

to some but not all of the Carriers the Shipper shall be at liberty to ship by such cancelling Carrier or Carriers so long as such cancelling Carrier or Carriers remain members of the Far East Conference without thereby violating this Agreement.

11. It is agreed that the party herein referred to as the Shipper is not the agent or broker for any principal, whether disclosed or undisclosed, and that no party who is not named herein or at the foot hereof shall have any rights as Shipper by virtue hereof.

 (Shipper)
 By -----
 (Title)

 (Address of Shipper)

SUBSIDIARY, ASSOCIATED AND/OR PARENT COMPANIES :

 FOR AND ON BEHALF OF MEMBERS OF FAR EAST CONFERENCE :
 (List of Members on Reverse side) :

By -----
 Chairman

11 Broadway, New York 4, N. Y.
 (Address of shipper Must be Shown on Contract)

LIST OF CARRIERS

American-Hawaiian Steamship Co.
 American President Lines, Ltd.
 Daido Kaiun Kaisha, Ltd.: A. L. Burbank & Co., Ltd., general agent.
 The De La Rama Steamship Co., Inc.
 The Swedish East Asia Co., Ltd.
 The Ocean Steam Ship Co., Ltd.
 The China Mutual Steam Navigation Co., Ltd.
 Nederlandsche Stoomvaart Maatschappij "Ocean" N. V. :
 De La Rama Lines
 Funch, Edye & Co., Inc., general agents
 Ellerman Lines, Ltd.
 Ellerman & Bucknall Steamship Co., Ltd.
 Hall Line, Ltd.
 The City Line, Ltd. :
 Ellerman & Bucknall Associated Lines
 Norton, Lilly & Co., general agents
 Skibsaktieselskapet Varild
 Skibsaktieselskapet Marina
 Aktieselskabet Glittre
 Dampskidinteressentskabet Garonne
 Skibsaktieselskapet Sangstad
 Skibsaktieselskapet Solstad
 Skibsaktieselskapet Siljestad
 Dampskibsaktieselskabet International
 Skibsaktieselskapet Mandeville
 Skibsaktieselskapet Goodwill :
 Fern-Ville Far East Lines: Fearnley & Eger
 and A. F. Klaveness & Co. A/S
 Fearnley & Eger, Inc., agents
 Intercontinental Marine Lines, Inc.: American & Overseas Ship Brokerage, Inc.,
 general agents
 Isthmian Steamship Co.
 Aktieselskapet Ivarans Redfri
 Skibsaktieselskapet Igadi
 A/S Besco
 A/S Lise
 Ivaran Lines: Far East service
 Stockard & Company, Inc., general agents

Kawaski Kisen Kaisha, Ltd.: Kerr Steamship Co., Inc., general agents
 Nissan Kisen Kaisha, Ltd.
 Toho Kaiun Kaisha, Ltd.
 Iino Kaiun Kaisha, Ltd.
 Mitsubishi Kaiun Kaisha, Ltd.:
 (Kokusai Line)
 States Marine Corp. of Delaware, general agent
 Lykes Bros. Steamship Co., Inc.
 Mitsui Steamship Co., Ltd.: Wm. J. Roundtree Co., Inc., general agents
 Dampskibsselskabet Af 1912 Aktieselskab
 Aktieselskabet Dampskibsselskabet Svenborg:
 A. P. Moller-Maersk Line
 Moller Steamship Co., Inc., agents
 Nippon Yusen Kaisha: Boyd, Weir & Sewell, Inc., as agents
 Osaka Shosen Kaisha, Ltd.: American-Hawaiian S. S. Co., agents
 Prince Line, Ltd.: Furness Withy & Co., Ltd., agents
 Shinnihon Steamship Co.: Texas Transport & Terminal Co., Inc., agents
 States Marine Corp.
 States Marine Corporation of Delaware
 The Bank Line, Ltd.: Boyd, Weir & Sewell, Inc., agents
 United States Lines Co.: American Pioneer Line
 Waterman Steamship Corp.
 Wilhelmsen Dampskibsaktieselskab
A/S Den Norske Afrika-Og Australielinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart IV
A/S Tankfart V
A/S Tankfart VI
 Barber Steamship Lines, Inc., agents
 Yamashita Kisen Kaisha: Norton, Lilly & Co., general agents

FAR EAST CONFERENCE MEMBERSHIP

1. American-Hawaiian Steamship Co.
2. American President Lines, Ltd.
3. Daido Kaiun Kaisha, Ltd.: A. L. Burbank & Co., Ltd., general agent
4. The De La Rama Steamship Co., Inc.
 The Swedish East Asia Co., Ltd.
 The Ocean Steam Ship Co., Ltd.
 The China Mutual Steam Navigation Co., Ltd.
 Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V. (De La Rama Lines)
 Funch, Edye & Co., Inc., general agents
5. Ellerman Lines, Ltd.
 Ellerman & Bucknall Steamship Co., Ltd.
 Hall Line, Ltd.
 The City Line, Ltd. (Ellerman & Bucknall Associated Lines)
 Norton, Lilly & Co., general agents
6. Skibsaktieselskapet Varild
 Skibsaktieselskapet Marina
 Aktieselskabet Glittre
 Dampskibsinteressentskabet Garonne
 Skibsaktieselskapet Sangstad
 Skibsaktieselskapet Solstad
 Skibsaktieselskapet Siljestad
 Dampskibsaktieselskabet International
 Skibsaktieselskapet Mandeville
 Skibsaktieselskapet Goodwill (Fern-Ville Far East Lines Fearnley & Eger and
 A. F. Klaveness & Co. A/S)
 Fearnley & Eger, Inc., agents.
7. Intercontinental Marine Lines, Inc.: American & Overseas Shipbrokerage,
 Inc., general agents
8. Isthmian Steamship Co.

9. Aktieselskapet Ivarans Rederi
Skibsaktieselskapet Igadi :
A/S *Besco*
A/S *Lise*
(Ivaran Lines-Far East service)
Stockard & Co., Inc., general agents
10. Kawasaki Kisen Kaisha, Ltd. : Kerr Steamship Co., Inc., general agents
11. Nissan Kisen Kaisha, Ltd.
Toho Kaiun Kaisha, Ltd.
Lino Kaiun Kaisha, Ltd.
Mitsubishi Kaiun Kaisha, Ltd. (Kokusai Line)
States Marine Corp. of Delaware, general agent
12. Lykes Bros. Steamship Co., Inc.
13. Mitsui Steamship Co., Ltd. : Wm. J. Rountree Co., Inc., general agents
14. Dampskibsselskabet Af 1912 Aktieselskab
Aktieselskabet Dampskibsselskabet Svendborg (A. P. Moller-Maersk Line)
Moller Steamship Co., Inc., agents
15. Nippon Yusen Kaisha : Boyd, Weir & Sewell, Inc., as agents
16. Osaka Shosen Kaisha, Ltd. : American-Hawaiian S. S. Co., agents
17. Prince Line, Ltd. : Furness Withy & Co., Ltd., agents
18. Shinnihon Steamship Co. : Texas Transport & Terminal Co., Inc., agents
19. States Marine Corp.
States Marine Corporation of Delaware
20. The Bank Line, Ltd. : Boyd, Weir & Sewell, Inc., agents
21. United States Lines Co. (American Pioneer Line)
22. Waterman Steamship Corp.
23. Wilhelmsen Dampskibsaktieselskab :
A/S *Den Norske Afrika-Og Australie-linie*
A/S *Tonsberg*
A/S *Tankfart I*
A/S *Tankfart IV*
A/S *Tankfart V*
A/S *Tankfart VI*
Barber Steamship Lines, Inc., agents
24. Yamashita Kisen Kaisha : Norton, Lilly & Co., general agents

The CHAIRMAN. We have an interesting letter from Mr. Robert Furness, attorney at law.

(The letter follows:)

WASHINGTON, D. C. May 31, 1958.

Re dual-rate hearing June 2, 1958.

Mr. JOHN M. DREWRY,

*Chief Counsel, Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.*

DEAR MR. DREWRY: I will be unable to attend the hearing but submit the following statement in support of the proposed legislation as reported in Congressional Information Bureau May 29.

Unless immediate remedial legislation is enacted, the foreign commerce of the United States is headed for utter chaos as the result of the Supreme Court decision of May 19, 1958, outlawing the dual rate system in the Japan-Atlantic and gulf trades, under section 14 of the Shipping Act, 1916. That decision upsets practices sanctioned by all of the regulatory agencies for more than 40 years.

I wish to emphasize that although the Federal Maritime Board hearing in that case lasted for 3 months, not a single importer or exporter testified against the system or challenged its legality. And throughout the years from 1916 to date the vast majority of shippers and receivers of freight in foreign commerce have supported the dual-rate system and have based their business practices on it.

Nor does the evidence in the Supreme Court case show that the single carrier opposing the dual-rate system suffered from any discrimination, prejudice, or retaliation whatever.

When the dual-rate system was scrapped by Japan-Atlantic and Gulf Freight Conference and the "open" rates took its place in March 1955, a long and destructive rate war broke out resulting in irreparable damage to United States-flag carriers and throwing traders into confusion and uncertainty. Nobody gains from rate wars and if history means anything at all we are now in for more

rate wars unless Congress steps in. It is common knowledge that the United States steamship operators cannot hope to survive rate wars in the face of low-cost foreign-flag competition. The overwhelming consensus of importers and exporters favors stability of rates that is assured by the traditional dual rate system.

I am not here representing any carrier, exporter, importer, or other commercial interest. My interest is prompted by the fact that I was the Federal Maritime Board hearing examiner who conducted the hearing and wrote the recommended decision in the proceeding which led to the Supreme Court decision in question.

Respectfully,

ROBERT FURNESS.

(Letter from John J. O'Connor to Robert Furness follows:)

LAW OFFICES,
JOHN J. O'CONNOR,
Washington, D. C., June 4, 1958.

Re H. R. 12748, 12751, 12758, dual-rate hearings before House Merchant Marine and Fisheries Committee.

Mr. ROBERT FURNESS,
*13th and Pennsylvania Avenue NW.,
Washington, D. C.*

DEAR BOB: When you appeared to testify today, as I understand at the request of the chairman of the committee, I felt badly about your side remark to me "Did you call me a liar?" I did not—never! Someone must have "lied" to you, in so informing you.

What happened was this:

When the chairman hastily, yesterday, read (p. 134 of minutes) your letter of Saturday, May 31, reference his proposed legislation (H. R. 12751), not yet introduced, and like all the similar legislation, introduced "by request," I thought I heard read that you stated, in that letter, that in no hearing concerning dual rates had any shippers testified against the system.

Whereupon I rose to state that your statement was "incorrect," my exact word—and no other was used. Thereupon the chairman stated that I was saying you were "a liar," a "damn liar," repeating this several times. I then denied I had said any such thing, that it was the chairman who was saying it; that you were a good friend of mine, and that I was not accustomed to using the "short and ugly word."

Unfortunately, the chairman, on his own motion, struck out of the record—which would have appeared following page 135—all of this colloquy, including my words. I thought he was just striking out his own words.

It was my mistake in wrongly interpreting your letter, as read. When I got a chance to read the letter, I immediately saw my mistake was in believing you were referring to all dual-rate hearings including the several over which you had presided, rather than this particular one, only (Federal Maritime Board Docket 730), which wound up in the Supreme Court.

You, of course, well know that some shippers appeared in some dual-rate hearings in opposition to the system, and especially in the hearing, before you, at San Francisco, in 1947 (Docket No. 648) where, as I recall the record, practically all shippers of fruit abroad opposed the use of the dual-rate system.

In the hearing in question, Docket 730, it is true that no shippers testified against the system, because all shippers were located in Japan, and while the conference could afford to bring on, and maintain for weeks, 3 Japanese shippers, who hesitatingly, and with several reservations, supported the introduction of the system, solely to end the rate war which had been started by the conference, the independent carrier was not equally opulent to afford such a very considerable expense.

You will recall, however, that statements and documents from shippers and shipper organizations (exhibits 27, 48, 49, 52, 86, 106) were introduced in that hearing, in opposition to the system, or at least not in support of it.

With sincere regrets that this situation has arisen, to becloud our long friendship, despite the fact that as presiding officer you often decided against me, I trust this letter will straighten out the situation.

Sincerely yours,

JOHN.

DEAR MR. CHAIRMAN: I respectfully request that you make this letter part of the record.

JOHN J. O'CONNOR.

The CHAIRMAN. Mr. O'Connor, I have stricken from the record the remarks that I made about the letter that I read and you can justify, if you will, a letter to me contradicting this letter and I will insert it in the record at this point.

(The letter mentioned follows:)

LAW OFFICES, JOHN J. O'CONNOR,
Washington, D. C., June 4, 1958.

Re H. R. 12748, 12751, 12758, dual-rate hearings before House Merchant Marine and Fisheries Committee.

Hon. HERBERT C. BONNER,
Chairman, House Committee on Merchant Marine and Fisheries,
Washington, D. C.

DEAR MR. CHAIRMAN: On June 3 during my testimony I mentioned that Lykes Bros. Steamship Co., Inc., one of the very largest American operators, a member of 34 conferences, some years ago brought several proceedings against several conferences, in which that company attacked the dual-rate system, used by those conferences, on the same grounds, if not more, as Isbrandtsen and the Departments of Justice and Agriculture, etc., have done.

Solely because, on the same day, Mr. Bartel, for Lykes, in effect denied that statement of mine and today Mr. Alex Cocke, vice president of Lykes, categorically denied it, without equivocation, I feel compelled to support my statement of facts, for over 10 years well known before the Federal maritime authorities, and in the shipping trades, to wit:

Under date of August 29, 1947, over the name of William Radner, attorney, formerly chief counsel for the maritime authorities, 4 printed complaints¹—copies now, and for 10 years, in my possession—were filed with the United States Maritime Commission, predecessor of the present Board, by the Lykes Co. against 4 different conferences:

Deli/New York conference (Docket No. 663),
Atlantic and Gulf/Dutch East Indies conference (Docket No. 664),
Straits/New York conference (Docket No. 665), and
Java/New York conference (Docket No. 666).

Those conferences were then controlled by foreign lines, 14 to 2 American lines, 10 to 1, 16 to 3, and 11 to 1.

In each complaint the following language was used:

"12. Upon information and belief the respondents, acting in concert with each other, conspired to obtain a monopoly of the traffic in the trade described in paragraph 4 hereof, and said respondents have in fact obtained a monopoly of said trade, in restraint of the trade and commerce of the United States and to the detriment thereof, it being the purpose of object of such combination and conspiracy to exclude Lykes from participation in said trade.

"13. In furtherance of said combination and conspiracy respondents have unjustly excluded Lykes from participation and membership in said conference.

"14. As a means of effecting the purposes of said combination and conspiracy it has been and now is part of the plan and purpose of the respondents to establish and maintain, and respondents have established and do maintain, a system of 'contract rates' and higher 'noncontract rates,' the sole consideration for the lower 'contract rates' being the agreement of the shipper party thereto exclusively to patronize members of the said conference in effecting its transportation requirements in the subject trade.

"15. Respondents, by their combined economic power, exerted through the aforesaid exclusive patronage contracts and the coercive rate differentials hereinabove mentioned, and otherwise, have induced and compelled many shippers to and from United States gulf ports to patronize the corporate respondents exclusively and to refrain from making any commitments to make shipments in said trade over Lykes' line; Lykes has, therefore, been unable to operate its vessels in the trade described in paragraph 4 hereof, though Lykes has otherwise been ready, willing, and able so to do. Respondents have thereby deprived Lykes of a large amount of business which but for said acts done pursuant to said conspiracy and combination Lykes could and would have procured. Unless such conspiracy and combination are condemned and respondents are required to cease

¹ All sworn to by Cocke.

and desist from said practice, Lykes will be deprived of further business in said trade and will suffer irreparable injury."

Apparently such complaints were not pressed because Lykes later became a member of each of the said 4 foreign-dominated conferences, thus entitling the former most vehement complainer to join in the "monopoly in restraint of the trade and commerce of the United States," and in said "combined economic power, exerted through said exclusive patronage contracts."

I also respectfully request you to make this letter part of the record.

Respectfully yours,

JOHN J. O'CONNOR.

The CHAIRMAN. Our next witness is Mr. Ralph B. Dewey, president, American Steamship Association.

STATEMENT OF RALPH B. DEWEY, PRESIDENT, PACIFIC AMERICAN STEAMSHIP ASSOCIATION

Mr. DEWEY. My name is Ralph B. Dewey, president, Pacific American Steamship Association, which is a trade organization, comprised of American-flag ship operators, includes eight companies engaged in foreign and offshore ocean trades, and all are members of conferences governing their routes.

The invested capital in these companies' ships is close to \$200 million. Most of these companies are holders of operating-differential subsidy contracts and are engaged in ship replacement programs which will eventually make their investments about four times present valuation.

The stability of freight rates, in large measure a result of the dual-rate system, is of overriding importance in protecting present investments and making future investments possible.

Before I proceed with the rest of my statement, Mr. Chairman, I would like to comment on several things that have been brought forth in this hearing with the fear that the record might be standing on one foot in regard to some of them and needs a balancing.

Some references have been made to inexperienced witnesses. I hesitate to outline my background but I started on the San Francisco waterfront in 1936, 22 years ago. My orientation is as an importer, rather than as a shipping man because that is where I got my early training in the business of foreign trade.

Inference has been made that conferences are monopolies. In the transpacific trade there are 17 companies and if there is a monopoly I wonder what all the freight solicitors are doing out every morning hustling freight up and down California Street and down in the Central Valley.

There was reference in previous testimony to the issue of rebating, that certain conferences are really undisciplined in this regard. The conferences have heard the same rumors that the previous witness referred to and, if there is any documentation on this, I am sure they would welcome receiving it in their offices in order to take corrective police action on it.

These rumors should be nailed down. If anybody has documentation, it should be brought forth immediately.

The only two trade routes where rate wars have occurred in the postwar period have been routes where there was no dual-rate system.

The CHAIRMAN. Where are those routes?

Mr. DEWEY. The North Atlantic homeward and the Japan homeward to the Pacific coast.

The CHAIRMAN. That is the one to which the decision referred?

Mr. DEWEY. Partly. It was a dual docket.

The CHAIRMAN. That is where the major trouble is?

Mr. DEWEY. That is where the two major crises have occurred. Both are routes where there was no dual-rate system in existence at the time.

The reference was made that what has happened in the dual-rate system is that there are two rates charged for identical transportation service.

Mr. Chairman, it is not identical transportation service any more than where a man pays one rate of \$12 for a hotel for 1 day and takes the same hotel room for a month at \$200. It's the identical hotel room, identical maid service, identical answers to the bell when it is rung, but one gentleman makes a long-term commitment and the other takes a 1-day shot at it.

Further than this, it is not identical because the conference lines offer a far wider range of port destinations. They offer a far better class of ships in general. They offer schedules that will meet the needs of the shippers in that trade route and, finally, they have an obligation to the traders in that route.

The figures the previous witness dispensed around the room on the differences in cost between American and foreign operators are approximately 13 years old. I do not know of any berth-line operator today, American flag, that operates at \$2,000 a day. It is much closer to \$3,700 a day.

This is a typical statement made by people unfamiliar with actual shipping operations and, perhaps, other witnesses that have had a longer tutelage in this than I could spell out. But, 5 years ago, Mr. Chairman, a daily cost of a ship operation under the American flag in the transpacific route approximated \$3,700, and there has been a lot happened in 5 years.

Some comments were made that the subsidy represents a large portion of the dividends that certain companies pay out every year, which is a very insidious kind of argument. I think the committee would be better oriented to think of the subsidy income in an average trade route, and this is without the benefit of a complete calculation but could be substantiated, as representing about 10 to 12 percent of that company's income in any given year. So that, when you are talking about exorbitant rates or rate wars, you are talking about companies whose subsidy is a minimal part of their total income, so that it is not the balance wheel that will permit them to go down to the basement on rates in a rate war. The subsidy gives them no fat to go down and grovel in the lower echelon on rates.

Another point that needs clarification is that I believe the statement was made that only 60,000 people are employed in American shipping. I think there are 60,000 people in 1 labor union alone and close to 100,000 in all the labor unions involved. Those are just the men who sail the ships.

The shore organizations are probably a ratio of 1 to 6, compared with seagoing personnel, I would say; so, that means there must be 15,000 people involved in just the shore organization of the steamship lines, in addition to which there are, on the Pacific coast, 12,000 long-shoremen, and on the Atlantic coast, I would stand corrected, but I

think in the neighborhood of 22,000. You could add it all up, Mr. Chairman, and the 60,000 figure needs a lot of refining.

As regards the interest in this matter of the farm community, I think it must be clarified, and you can ask these questions when the farm witness appears before you. But, to my knowledge, the American Farm Bureau Federation, which has requested time in these hearings, is not a shipper. They are an omnibus farm group representing 1.2 million farm families with 6 million people represented.

Inevitably, when a farm group or individual growers pass judgment on the use of the conference system, the result is one of outright adherence to the system as self-preservation for them. I will point that out in my statement in a minute.

I think, also, Mr. Chairman, that the reference by a previous witness to the Associated Steamship Lines in Manila as being a tentacle-type operation in which violations in any one of the tentacles bring repercussions in any of the others should be substantiated by expert knowledge on the subject. Frankly, Mr. Chairman, there is a lot of skepticism on that statement, and it should not be taken until checked.

Of course, Mr. Mailliard made a very forthright attempt to correct this business about exorbitant rates. It seems to me that, if conference rates are exorbitant, anybody quoting only 6 to 10 percent under the exorbitant rate is also exorbitant.

As a matter of fact, an independent operator has the privilege of going above the conference rate, be it the contract or the noncontract rates. He has that right and that privilege. I am sure there are many occasions when freight space is tight where the independent in question has gone above the conference rate charging, indeed, what the traffic will bear, so that, if the conference rate at that moment is exorbitant, then the independent who exceeds it is superexorbitant.

Mr. Chairman, at the conclusion of my statement I would like to have the gentleman who is accompanying me at the witness stand make a statement. He is Mr. George Talmage, who is a member of our association's traffic committee and vice president of the State Steamship Co. with some 37 years' experience in the steamship business. Mr. Talmage has collaborated with me in preparing this testimony.

As this Nation has become acutely aware, decisions of the Supreme Court can have profound and sweeping effects upon the social, economic, and political course of events in the United States. The decision of May 19, 1958, by the Supreme Court in *Isbrandtsen v. United States* is of this magnitude.

This decision so profoundly affects the economic framework in which the steamship industry operates as to suggest that clarifying legislation is essential at this time if American ships are to properly serve American commerce in world competition.

The decision, likewise, profoundly affects the foreign trader whose very livelihood is predicated on stable and economical ocean transport.

H. R. 12751, by Mr. Bonner, is designed to retain the contract-non-contract rate system, or dual-rate system, for a sufficient period of time to allow Congress and the foreign-trade commodity to continue present contractual relationships pending a determination that these contractual relationships should cease, or be altered.

In upholding the lower court decision outlawing dual-rate systems in use by one particular conference, the Supreme Court struck at the

heart and soul of the entire conference system. Indeed, the Court struck at congressional intent, as expressed in the 1916 Shipping Act. And it is a most timely decision that this committee should seek to clarify its predecessor committee's intent.

More specifically, the issue before the industry and before this committee at this time is what kind of ties did Congress intend should be used in keeping a conference system intact? Before answering this, a quick look at the conference itself and its function in world trade is in order.

The question is often asked: What is a conference? I have tried to do it in two sentences here in simply saying that steamship conferences might best be likened to a railroad rate bureau, in that they set rates for a defined trading area, and do so under exemption from the anti-trust laws.

They are voluntary unions of shipowners, foreign-flag and American-flag, engaged in a particular trade route, viz, North Atlantic ports to North Europe ports; California ports to the Far East, etc.

Some 100 in number, they have paid staffs in modest quarters in port cities and publish rate tariffs, and tariff changes as they are determined upon by recommendation of member traffic managers meeting as a rate committee. These rate committees and conference principles are responsive to individual shippers as well as shipper groups in setting rates. Conference agreements are approved by the Federal Maritime Board.

By and large, the overwhelming preponderance of liner companies in any given trade route are members of the conference governing that route. Those who are not members are few in number, and operate in only a few scattered routes. Conference membership is voluntary and the only requirements are adherence to conference ground rules and a modest entry fee.

In most trade routes, and where justified, the shipper trader or manufacturer establishes his relationship with the conference by means of signing an exclusive patronage contract which gives him the benefits of "contract rates," usually 10 to 20 percent below established rates, provided the shipper tenders all his cargo to member lines of the conference.

It is this exclusive patronage requirement which has held conferences intact and thereby stabilized rates. It is significant that the prime leader in opposing the use of patronage contracts has not been the exporter and shipper organizations, but rather a single steamship line who argues that he has been discriminated against.

As sail gave way to steam in ship propulsion, ocean schedules settled down to a more regular pattern. By the 1870's a number of trade routes, mostly to and from Europe, had become "regularized" and liner-cargo fleets offered scheduled, advertised services at prescribed rates.

Shippers and traders jumped at the chance to conduct their business with known-cost factors, in contrast to the previous uncertainty of departures and arrivals, volatile rate changes, and other attendant risks. A new era in trade development commenced, and with it came the demand for newer, faster, and more suitable vessels to serve the general merchandise trade.

Lesser industrialized countries, such as the United States, which had heretofore been plagued with instability of transportation costs and

irregularity and inadequacy of ocean services, could now compete in world markets for a wide variety of manufactured and processed goods.

By the early 1900's, trade routes to and from the United States had conference arrangements but continued their business outside the scope of any carefully defined standards. Shortly after the passage of the Sherman Anti-Trust Act, certain lawsuits were filed naming the conferences, and industry members thereof, as being in restraint of trade. At the time foreign-flag shipping heavily dominated our trade routes.

Congress determined to probe the matter to find out how American-flag traders and American-flag steamship lines could participate within the framework of our antitrust statutes. The result was an investigation under the leadership of Chairman Alexander of the House Merchant Marine Committee, followed by introduction of legislation to put conference arrangements under some kind of statutory standard. Ultimately, this legislation was incorporated into what is now known as the 1916 Shipping Act.

For 40 years, since the 1916 act, certain steamship conference practices, namely the use of deferred rebates and "fighting ships," have been prohibited by specific provision in that statute. Others, among them the quoting of contract/noncontract rates, dual rates, have not been prohibited by law, nor has anyone in 40 years asked Congress to make it a prohibited practice.

The issue has, however, been in the courts and the recent case unfortunately confuses the matter. The conferences have found dual rates the least objectionable and most equitable method of giving shippers the service and rate stability they need to stay in business and is their best medium of self-regulation. At the same time, shippers have voluntarily tied themselves to the conference lines in such a way that the lines can be assured of a certain volume of patronage. Without such collective assurance, from all or most shippers in a trade route, no shipowner can plan ahead.

In the words of one Supreme Court brief on this subject :

Hundreds of millions of dollars have been invested by our Government and by private parties in the building, for operation in the various United States foreign trades, of ships which incorporate the most advanced design. These moneys were invested on the theory that freight rates in United States foreign commerce could be stabilized by the dual-rate system, the only practicable defense, always regarded as lawful, against the kind of competition which would destroy such investments. If the consistent interpretation above outlined should now be abandoned, then rate competition will take the place of competition in quality of service; and the cheapest ship, entailing the lowest depreciation and the lowest insurance coverage, will be the most effective in the struggle for survival.

(Brief filed by Japan-Atlantic/Gulf Freight Conference, September 13, 1957.)

Much has been made of the fact that it is not the conference system which was on trial on this case, but only the dual-rate device, implying that the conferences will survive even if dual rates, as a "tying" or "binding" device does not. Nothing could be further from the truth. In order to see this, we must look at a little bit of history.

As conference abuses became evident to shippers and traders in the early days of conference self-regulation, 1875-1900, a clamor went up from the foreign-trade community in England and the United

States for some kind of reform. A British Royal Commission commenced a study in 1906 and in 1909 reported its findings to Parliament.

Its mandate was—

to inquire into the operation of shipping rings, or conferences generally, and, more especially, into the system of deferred rebates, and to report whether such operations have caused injury to British or colonial trade, and, if so, what remedial action should be taken * * *.

In this country, the House Merchant Marine and Fisheries Committee, chaired by Joshua Alexander of Missouri, commenced in 1912 a 2-year study of conferences, and reported to Congress its findings in 1914. This Alexander report became the basis of conference regulation as provided in the 1916 Shipping Act.

Both studies commenced in an atmosphere of hostility to conferences and tying arrangements with shippers, and both wound up with recommendations for not only continuing the conference system, but also recognized the benefits to both shipowner and shipper of a tying arrangement as absolutely essential to bind the conference together, provided the tie was fair and equitable.

Without some kind of a tie, these reports said, the conference itself, and its rate structure, would be a meaningless thing for both shipowner and the exporters and importers. In the Alexander report, the committee analyzed four methods by which conferences sought to meet outside competition. These four are:

1. The deferred-rebate system, whereby a shipper gives 100-percent patronage to conference lines in exchange for a cash rebate at some future time, usually paid 6 months after the end of the period for which it is computed, and then only if exclusive patronage has been continual right up to the moment of rebate.

2. "Fighting ships," whereby a conference designates one of its members' ships to "straddle" the loading dates of a would-be non-conference competitor, and cut the rate to any level necessary to keep him from getting cargo. Losses sustained by the fighting ship are shared by all members of the conference.

3. Refusal by conference lines of space to shippers who patronized nonconference carriers.

4. The contract system, whereby shippers who guarantee by contract all of their business for a period of time, usually only 1 year, in exchange for a reduced rate.

The Alexander committee flatly rejected the first three kinds of tying devices and prohibited, by law, their future use in United States foreign trade. The fourth device, contract rates, was not so prohibited, and has been used by United States conferences since the passage of the act.

However, during most of this time the issue has been in the courts, spearheaded by the Isbrandtsen Co., and supported by at least two branches of our Government to prohibit the use of contract-non-contract rates.

Who wins and who loses? What are the advantages and disadvantages of this tying device, and what will happen to conferences if they go by the boards? First of all, one must assume that some kind of tying device is necessary. To assume otherwise is to argue for the death knell of conferences themselves.

If deferred rebates and retaliatory devices are illegal by law, and contract-noncontract rates are determined to be illegal by court edict, what kind of tie is left? Trading stamps? Even these are under legal fire.

Clearly, the alternative to the contract-noncontract rate system is not some other kind of tie; the alternative is chaos in the ocean trades, with secret rates, preferential rates to big shippers, and rate wars whose only benefit is to the most well-heeled shipowner who weathers the storm.

Certainly, the seeds of steamship monopoly are inherent in the aftermath of such chaos. Thus, the short-term rate advantage in a rate war spawns a long-term chaos out of which only big shippers and big shipowners can hope to survive.

Both the British and American investigations referred to above agreed on the advantage of the conference system, and, further, they both agreed that it could only survive if a tie binds shippers and shipowners to a performance standard. Some of the advantages of the contract rate system suggested in these investigations are:

1. Equality of rates between large and small volume shippers.
2. Stability of rates over long period of time (60- to 90-day notice of rate changes usually required) making possible forward buying and selling on a firm basis.
3. Faster, more frequent and more reliable schedules, with continuity of service year-round.
4. Avoids chaos of cutthroat competition as in rate wars wherein only one or a few lines survive, possibly assuming a monopoly position.
5. Permits new ship operators to enter a trade route, with access to all available cargo on same basis as existing lines.
6. When conference integrity is tight, it guarantees shipper he is on a par with his competitors in the route, at least as regards ocean costs.
7. Avoiding secret rate agreements with big shippers, which can stifle foreign trade for small shippers, by introducing a major unknown to the price formula in bidding for overseas business.

So far, Mr. Chairman, we have talked about the shipowners' view. We now will have a word about the shipper.

Special mention must be made at the outset of the role dual rates play in protecting commodity interest from unscrupulous competition from others engaged in the same business.

Recent examples of the sympathies of shipper groups are worthy of comment. One involves a fruitgrower organization in the Pacific Northwest who, a year or so ago, called a meeting of its members for the sole purpose of putting a stop to a move by 1 grower member to accept the cut rates offered by a 1-shot, nonconference ship from the United States west coast to Europe.

Another involves flour shippers in the Pacific Northwest who, early this year, were faced with a similar problem and took steps to stop one of their colleagues from accepting cut rates in the flour trade to the Orient.

In both cases it was argued that, so long as conference lines in the trade route had space available, no fruitgrower and no flour shipper should break ranks simply to gain a temporary cost advantage

in his particular markets. Why was such loyalty to the conference lines so evident in this and similar cases, and why did shippers involved come to the conference lines and insist that they cooperate in avoiding rate cutting?

It was a simple case of shipper self-preservation. Neither of these groups were willing to stand aside and let one or a few competitors get a cut cost in freight lest that competitor receive an unfair advantage in bidding for overseas business.

Thus, the conference system, with its contract-noncontract rate discipline is viewed as an important protective device in the hands of any shipper group to ward off cutthroat competition within that group's own ranks.

The shipowners' view, in substance, is this: If the conference system and its essential byproduct, the contract-noncontract rate system is, in addition to being a stabilizing influence, a device to ward off the influx of uninhibited competition into any given trade route, let us, at least, recognize its true complexion.

Fundamental economies of transportation demonstrate that common carriers in all mediums need to have limits placed upon the encroachment of new competition, limits which permit new enterprise, but not at the risk of destroying existing enterprise.

In air service, the Civil Aeronautics Board decides when, as, and if a foreign airline will be granted a franchise to land in this country and participate in the lucrative cargo and passenger business afforded here. They even designate the number of arrivals and departures per month, and the President of the United States must approve the arrangements.

In rail service, and common-carrier truck and barge service, no new carriers can enter the picture without a certificate of convenience and necessity from the Interstate Commerce Commission.

No pipeline can start operation until the Federal Power Commission grants the authority; nor can a television or radio station begin broadcasting until FCC gives it a green light.

In all of these cases, elaborate public hearings precede the decision, and parties who can show injury, unfair competition, et cetera, can control the entry of new enterprises in domestic transportation and communications. Not so in ocean shipping.

Any shipowner, be it Greek, Panamanian, French, English, Dutch, Scandinavian, Japanese, or American, or otherwise, can call his ships at any United States port he chooses, advertise his service and sailing dates in the newspapers, and he is in the common-carrier business for as long as he desired.

He can call at United States ports as often as he wishes; daily, if he has enough ships. Under such circumstances, it cannot be denied that the huge investments in ocean cargo vessel operation, \$10 million to \$20 million per American cargo vessels as well as passenger vessels, upward of \$50 million each, are entitled to some kind of statutory protection against unfettered, opportunistic competition that comes today and skims the cream, and leaves tomorrow for greener pastures.

New entrants who agree to abide by conference rates and regulations are not the problem. There should always be an open door for new ideas, new innovations, new capital, and new markets to conquer. But, if it is impracticable to require franchises before foreign lines can trade here, as is true for other forms of transport, then, at the

very least, there must be provided, within the framework of the statutes sanctioning steamship conferences, some clear authority for keeping the house in order.

The dual-rate, or exclusive-patronage contract, or the contract-non-contract rate system, by whatever label, is the least objectionable, indeed, the most practical and equitable, method of assuring stability and continued investment in ocean shipping. The unique position of the American-flag lines in this matter cannot be overemphasized.

It is one of the facts of life that United States-flag ship lines spend four times more for crew wages than do foreign-flag vessels. Overall, the United States steamship operation costs 50 percent more than foreign. It is also one of the facts of life that all American cargo liners in berth service, common carriers, are, or will shortly be, subsidized by the Government, up to a level of parity with their foreign counterparts in each route.

I should correct that, Mr. Chairman. There are two companies who are in the berth service who have not applied for subsidy. Those two companies are primarily integral parts of industrial enterprises and, for other reasons, they have chosen to stay outside the ranks of subsidized lines.

If rates are stable, and at a level sufficient to earn a profit, much of this subsidy is recaptured by the Government. Let us assume that contract rates are illegal by reason of the Supreme Court decision, and the conferences lose their control over rates and, in due course, a rate war ensues. Certainly, the American lines cannot avoid meeting cut rates by their foreign competitors, unless they want to go out of business. Revenues drop, profits are wiped out, and losses ensue. And, while the subsidy contracts do not reimburse an owner for losses in a rate war, it cannot be denied that there occurs a frustration of any Government recapture, at least until the rates are stabilized again and there are profits once again.

Thus it is that the American shipowner, with 50 percent more cost than his foreign competition, and the American taxpayer, with his investment in operating subsidies, have as much to lose in the event of conference impotency as do the traders and shippers themselves.

No matter how careful the Congress may be in passing legislation to set standards or preserve existing standards under which steamship rates are to be made, there will, probably, always be a scattered few shippers and shipowners who would prefer an undisciplined, open-rate, no-rules situation.

But the vast majority of traders, shippers, shipowners, and others concerned with the welfare of merchant shipping are firmly convinced that the system which has evolved is the most fair and the most equitable that could be devised. It represents the greatest good for the greatest number, and we strongly urge the committee to act favorably on H. R. 12751.

I would, Mr. Chairman, if I may, add one more comment in the nature of clarification, and this, again, has to do with farm products.

One of the paradoxes in all of these court suits, to those of us who have been observers, has been why the Department of Agriculture has been so active as an intervenor when they are, in every conference that I know of, given the privilege of contract rates, the lower of the two rates, without signing a contract agreement.

They are given that privilege for reasons that might be developed by another witness, but that is a fact, and this is a paradox, one which remains unanswered to those of us who have watched the development.

Mr. Chairman, if I might, I would like to see if Mr. Talmage would add a word or two to the remarks that I have made.

**STATEMENT OF GEORGE E. TALMAGE, JR., VICE PRESIDENT OF
TRAFFIC, STATES STEAMSHIP CO., SAN FRANCISCO, CALIF.**

Mr. TALMAGE. Mr. Chairman, my name is George E. Talmage, Jr. I am vice president of traffic of States Steamship Co., San Francisco, Calif. I am appearing before this committee on behalf of the Pacific American Steamship Association, an organization of all principal American-flag west coast steamship operators.

In a larger sense, however, my testimony is directed toward the American merchant marine as a whole. My entire business life, some 37 years, has been connected with the development of our merchant marine, both in private business and for a few years in Government service in Washington.

Over that period of years I have seen our American merchant marine gradually grow in size and quality from a miscellany of World War I built ships, generally noncompetitive in the foreign trades with ships of other flags, to a point where we today are operating some of the finest vessels under my flag. Nevertheless this is no time for complacency. Our percentage of foreign trade carried under the American flag is shrinking and we face increasing foreign-flag competition at a time when the American merchant marine is obligated to commence a tremendous replacement program.

The conference system is completely essential to the future welfare of the American merchant marine because it is one known means of achieving rate stability. By the same token it is equally essential to the American exporter and importer who must have advance assurance of rate maintenance if he is to make forward commitments to sell or buy.

A conference agreement does not alone guarantee rate stability. There must be some tying device to assure shipper loyalty to the conference in exchange for such guaranteed forward rates.

Prior to the Alexander committee study and report which resulted in the 1916 Shipping Act, many devices had been tried, including rebates, deferred rebates, and other devices which were condemned by the Alexander committee and are consequently forbidden by language of the 1916 act. The simple contract dual-rate system was the only one then in force which was not so condemned by the Alexander committee, nor do I believe that the intentions of Congress at that time have been properly read by the majority of the Court which last week struck down the dual-rate system based upon present statutory language.

It is accordingly, in my humble judgment, essential to the welfare of our American exporters and importers, as well as to the welfare of the American merchant marine, that legislation such as that under consideration must be adopted as a stopgap until a real current study can be accomplished by Congress unhampered by time pressures. There is too great risk of chaos if the present situation continues for

any lengthy period. The dual-rate system is in worldwide use and has not been under attack in any foreign country where its benefits to shipping and trade appear clearly recognized.

I would like to make one further little clarifying comment to the committee about one of the rate wars which we have been going through for the last 5 years.

I have been in the middle of it for all 5 years. I know how it started.

It started at a time when the Japanese shipping lines were just coming back into existence. Under the instigation of their Government they all joined the Homebound conference.

We had a nonconference competitor who was openly advertising rates in the papers 10 percent under conference rates and the poor Japanese were squeezed between established American lines and this cutrate competition. They could not resist the temptation and started handing back the 10 percent under the table. It was that which broke up the conference and started the rate war.

The CHAIRMAN. Who started paying it?

Mr. TALMAGE. The Japanese lines to protect themselves.

The CHAIRMAN. Who was the line that started the 10 percent advertising?

Mr. TALMAGE. Isbrandtsen openly. They did it in open advertisement in the papers in Japan. They did not bother to have a tariff, they simply offered the conference rate less 10 percent.

I wanted to add that clarifying note because the comment was made this morning that the conference was broken up for internal reasons. That just is not true.

That is all I have, sir.

The CHAIRMAN. Are there any questions?

Mr. ALLEN. Mr. Chairman.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. The Pacific American represents some intercoastal lines as well?

Mr. DEWEY. That is right.

Mr. ALLEN. Those are not bound by any conference, as I understand.

Mr. DEWEY. Not conferences pursuant to the 1916 act. They do have in the intercoastal trade what is known as the Intercoastal Steamship Freight Association which was originally pursuant to the 1933 Intercoastal Act and is now authorized under the 1940 Transportation Act. Their authority was transferred in 1940.

That group of companies all operate in very similar fashion to an ocean trading conference but are not strictly the type that fall within the 1916 act which we are amending in this legislation.

Mr. ALLEN. Are their rates published with and filed with the Interstate Commerce Commission?

Mr. DEWEY. Yes, they are, sir.

Mr. ALLEN. Are they then bound to a one-rate system that no shipper can avoid?

Mr. DEWEY. They use a one-rate system in the intercoast trade for a reason which I developed earlier that any newcomers would have to get a franchise from the ICC to operate so that the self-preservation concept reflected in the dual-rate system in the ocean trades probably is not necessary in the intercoastal trade.

Mr. ALLEN. Thank you.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. I have no questions, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Ray?

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. I have no questions.

The CHAIRMAN. Mr. Pelly?

Mr. PELLY. I have no questions.

Mr. DEWEY. Mr. Chairman, with your kind indulgence, could I make a comment?

Earlier today somebody asked the question as to what happened to freight rates before there were conferences.

I thought the committee might be interested in a study that was made by the Senate Commerce Committee in 1950 under the direction of Chairman Warren Magnuson, which report carries the number, Senate Report 2494, and which has a table labeled "Appendix 16." That table shows examples, and I will only quote some examples and suggest that it might make a contribution to the record to incorporate the entire table.

Here is an example of United States gulf to United Kingdom cotton rate during the 1914-18 period when conferences were just operating on the edge of legality and practical nonexistent.

The cotton rate was in that instance in 1914, \$6.27. In 1918 it had gone to \$140 or a 2,123 percent increase.

In World War II, when the conference system had come into being when American-flag participation in our trade routes was now a reality, in 1938 the cotton rate from the gulf to the United Kingdom was \$11.20. Its highest peak in 1945 was \$33.60, only a 200 percent increase.

In another example we have the general merchandise from the United States North Atlantic to the United Kingdom. In 1914, \$4.25. In 1918, \$66, a percentage increase of 1452 percent. In the World War II span of years, the rate went from general cargo rate of \$20 in 1938 to a rate in 1945 of \$31.50, or a 57 percent increase.

There are a number of other similar examples and I only want to conclude this comment by quoting from the appendix 16 of the previously referred to Senate report, where this statement is made:

This marked disparity between increases during the two wars can be explained first and foremost by the fact that in the second war the United States had a merchant fleet which could and did support every effort of the United States to control the rates through the Ship Warrant Act and otherwise. Without that fleet it would have been very difficult to have controlled the rates to be charged by foreign-flag vessels using our ports. It is also significant that during World War I the carriers allowed most of the conferences which had established the rates prior to the war to dissolve or become inactive and there was, therefore, no opportunity for joint expression by the carriers on runaway rates. During the Second War this mistake was not allowed to occur and the steamship conferences which were continued were utilized very extensively in policing and in helping to establish the freight rates.

This is a statement filed by the Maritime Administration and incorporated in appendix 16 to the above referred to report.

The CHAIRMAN. You may put that in the record at this point.

(The document referred to follows:)

TABLE XVI-A.—Comparison of actual and percentage increases made in liner freight rates on representative commodities, World War I and World War II

(A) UNITED STATES NORTH ATLANTIC

[Rates are per ton of 2,240 pounds except as otherwise specified]

	World War I			World War II		
	1914	1918	Percent of increase	1938	1945	Percent of increase
To United Kingdom:						
Wheat.....	\$1. 90	\$25. 65	1, 250	¹ \$2. 69	\$15. 68	482
Flour.....	2. 24	21. 41	855	5. 15	15. 68	204
Provisions.....	4. 86	66. 00	1, 258	14. 56	21. 17	45
Apples, ordinary stowage, per barrel.....	. 669	3. 00	348	. 80	2. 10	162
Lumber, soft.....	3. 696	66. 00	1, 685	14. 56	25. 98	78
General cargo, per 40 cubic feet.....	4. 25	66. 00	1, 452	20. 00	31. 50	57
To Havre, France:						
Grain.....	2. 28	74. 95	3, 187	² 3. 75	14. 17	278
Flour.....	4. 032	75. 00	1, 760	4. 928	15. 456	213
Provisions.....	6. 72	66. 00	897	14. 00	23. 18	65
General cargo, per 40 cubic feet.....	5. 00	66. 00	1, 220	20. 00	34. 50	72
To Genoa, Italy:						
Grain.....	3. 14	92. 47	2, 844	8. 96	16. 80	87
Flour.....	4. 256	92. 49	2, 073	8. 96	16. 80	87
Provisions.....	7. 30	75. 00	927	16. 00	30. 00	88
General cargo, per 40 cubic feet.....	6. 08	75. 00	1, 117	22. 00	37. 50	70

¹ Minimum rate; lines had privilege charging higher rates dependent upon market and other conditions.² Estimated rate; conference rate "open."

The CHAIRMAN. Thank you.

Mr. DEWEY. Thank you, sir.

The CHAIRMAN. I shall not read these telegrams. I will only note the address to the committee. They come from S. F. Coron, vice president, Dyson Shipping Co., supporting the proposed bill before the committee; Ira Blaustein, treasurer, Universal New York, Inc., New York; A. J. Merritt, chairman, business relations committee, Burlap & Jute Association, New York; Wedemann & Godknecht, Inc., New York; S. W. White, Jr., president, Oliver International, Chicago; and Libby, McNeill & Libby, C. B. Weston, San Francisco, Calif.

All these telegrams are favorable to this proposed legislation.

John D. Locke, chairman, ocean freight committee, American Cotton Shippers Association, Memphis, Tenn.; Revonah Spinning Mills, Hanover, Pa., the Linen Thread Co., Inc., Paterson, N. J., Columbian Rope Co., Auburn, N. Y., the Schlichter Jute Cordage Co., Philadelphia, Pa., River Jute Mills, Philadelphia; C. B. Marshall, Weirton Steel Co., Weirton, W. Va.; Russell de Lopez, assistant to the vice president, Puget Sound Pulp & Timber Co.; L. D. Warrick, Grays Harbor Exportation Co., Seattle; and last, but not least, a letter from the National Association of Alcoholic Beverage Importers, signed by Mr. Harry L. Lourie, executive vice president.

(The documents referred to follow:)

WEIRTON, W. VA., June 2, 1958.

HON. HERBERT C. BONNER,

Chairman, House Merchant Marine Committee,
House Office Building, Washington, D. C.:

We are opposed to the elimination of the steamship rate contract system by a recent Supreme Court decision as it will undoubtedly encourage a rate war and add to an already unstable if not chaotic condition in our foreign trade.

C. B. MARSHALL, Weirton Steel Co.

NEW YORK, N. Y. June 3, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee, United States House of Representatives, House Office Building, Washington, D. C.:

We favor legislation preserving conference contract system; believe this as essential to maintain stability for ocean carriers, as Boykin bill necessary to insure stability of foreign freight forwarding industry. Therefore urge your support of both bills.

S. F. CORON,

Vice President, Dyson Shipping Co., Inc.

NEW YORK, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, House Office Building, Washington, D. C.:

Reference pending legislation regarding termination contract rate system. It is imperative that the stabilization of rates be continued in order for small-business organizations, such as mine, be able to obtain same ocean freight rates as mammoth organizations and be competitive in quoting prices to our overseas accounts. Would appreciate your endeavoring to see that the contract rate system is continued.

IRA BLAUSTEIN,

Treasurer, Universal-New York, Inc.

NEW YORK, N. Y., June 3, 1958.

HON. HERBERT BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D. C.:

We understand hearings have commenced before your committee on stopgap bill to legalize dual-rate system until June 30, 1960. We strongly support the objectives of this legislation because our industry requires stability of freight rates and regularity of service which can be provided only by the conference system. In our opinion this has been jeopardized by the outlawing of the dual-rate system by the recent decision of the United States Supreme Court. We respectfully request favorable consideration of this measure to continue the contract-rate system.

A. J. MERRITT,

Chairman, Business Relations Committee, Burlap and Jute Association.

NEW YORK, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

Chairman, Committee on Merchant Marine and Fisheries, United States House of Representatives, Washington, D. C.:

Recent decision of Supreme Court declaring dual ocean freight rate system and agreements invalid can only lead to chaotic conditions and possible rate wars in ocean steamship industry. We strongly endorse your actions in proposing amendment to Shipping Act which would preserve the status quo in existence for the last 30 years.

WEDEMANN & GODKNECHT, INC.

CHICAGO, ILL., June 3, 1958.

HON. HERBERT BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D. C.:

Urge favorable consideration new legislation restoring dual-rate system as most orderly and effective for frequent shippers such as our company.

S. W. WHITE, Jr.,

President, Oliver International, S. A.

SAN FRANCISCO, CALIF., June 3, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D. C.:

Bill you are introducing which will assure status quo and continued use of present contract-rate system until June 30, 1960, has our complete support. We definitely feel contract-rate system vital for maintaining stability of our export trade as well as afford protection to steamship lines so they can provide the regular service they now offer to shippers. Cannery League of California will have representative testify today in Washington supporting this legislation.

LIBBY, MCNEILL & LIBBY,
C. B. WESTON.

MEMPHIS, TENN., June 2, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, House Office Building, Washington, D. C.:

The American Cotton Shippers Association has consistently supported the conference-contract system, since we believe that it is beneficial to the cotton farmer, as well as to cotton exporters in that it provides stable rates, dependable service, and generally eliminates the possibility of a few larger exporters securing lower freight costs not available to medium and small shippers. Cotton is generally sold 3 to 6 months forward, which sales are greatly facilitated by the conference contract system we hope the recent Supreme Court decision will not interfere with existing conference cotton contracts. We urge your prompt support of S. 3916 (the Magnuson-Bonner bill) to permit temporary maintenance of the status quo while permanent legislation is being developed.

JOHN D. LOCKE,

Chairman, Ocean Freight Committee, American Cotton Shippers Association.

NEW YORK, N. Y. June 2, 1958.

HON. HERBERT BONNER,

*House Office Building, House of Representatives,
Washington, D. C.:*

As large users of ocean freight for our imports of raw jute and other fibers, we favor the Ball bill now introduced in the House of Representatives permitting dual-conference rates to continue by amending the Shipping Act in the manner suggested by this new bill.

REVONAH SPINNING MILLS,
*Hanover, Pa.*THE LINEN THREAD CO., INC.,
*Patterson, N. J.*COLUMBIAN ROPE CO.,
*Auburn, N. Y.*THE SCHLICHTER JUTE CORDAGE CO.,
*Philadelphia, Pa.*DELEWARE RIVER JUTE MILLS,
Philadelphia, Pa.

BELLINGHAM, WASH., June 2, 1958.

HON. HERBERT BONNER,

*Chairman of House Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.:*

Understand legislation being presented shortly in connection with present dual-rate contract system. We are in favor of continuance of present system as outlined which understand is to be through 1960.

RUSSELL DE LOPEZ,

Assistant to the Vice President, Puget Sound Pulp & Timber Co.

SEATTLE, WASH., June 2, 1958.

HON. HERBERT BONNER,
*Chairman, House Merchant Marine and Fisheries Committee,
 Old House Office Building, Washington, D. C.:*

Present conference dual-rate system essential to preservation of freight rate stability. Heartily concur your proposed bill amending section 14, Shipping Act, 1916.

L. D. WARRICK,
Grays Harbor Exportation Co.

NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, INC.,
 Washington, D. C., June 2, 1958.

Re H. R. 12751

HON. HERBERT C. BONNER,
*Chairman, Merchant Marine and Fisheries Committee,
 House of Representatives, Washington, D. C.*

DEAR MR. BONNER: It is my understanding that hearings are to begin on June 3, with respect to the above bill, which, if adopted, would enable the operation of steamship conferences working under a dual system to operate until June 30, 1960.

This association has been the negotiator for importers bringing to the United States wines and spirits from the British Isles and using the services of the North-Atlantic Westbound Conference. We have arranged for contracts with this conference beginning with July 1, 1938, and recently agreed to a renewal of the contract as of July 1, 1958, for a period of 2 years.

The dual system has worked satisfactorily in our contract, and as far as we know, has never been criticized by any of the members of our association or other importers handling wines and spirits produced or shipped via this particular conference from the British Isles.

We would appreciate it if you record this association as in favor of H. R. 12751.

Very truly yours,

HARRY L. LOURIE,
Executive Vice President.

The CHAIRMAN. The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 4:45 p. m., the hearing was adjourned until 10 a. m., Wednesday, June 4, 1958.)

TO AMEND THE SHIPPING ACT OF 1916

WEDNESDAY, JUNE 4, 1958

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D. C.

The committee met at 10:05 a. m., pursuant to recess, in room 219, Old House Office Building, Hon. Herbert C. Bonner (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The clerk will get Mr. O'Connor a seat further up here so that he can hear.

The first witness this morning is Mr. Sinclair, Commerce and Industry Association of New York.

STATEMENT OF J. A. SINCLAIR, DIRECTOR, WORLD TRADE AND TRANSPORTATION DEPARTMENT, COMMERCE & INDUSTRY ASSO- CIATION OF NEW YORK

Mr. SINCLAIR. My name is Joseph A. Sinclair. I am director of the world trade and transportation department of the Commerce and Industry Association of New York, which is a chamber of commerce for the New York area. The membership of our association, which comprises a cross section of the industrial and business community, includes some 2,000 firms that are directly engaged in export and import trade. About 90 percent of the firms in that category employ less than 100 people and at least 50 percent employ less than 40 people.

On their behalf and because of the importance of the subject to shippers to the port of New York, the association has been studying the conference system and the operations of steamship conferences from the standpoint of shippers and receivers of international cargo for the past 4 years.

Our study started in the summer of 1954 with a questionnaire which we directed very widely to shippers not only in New York but in other cities as well, and the study was conducted by a committee of the association composed of specialists in the field of international transportation for firms which not only sell their products abroad but in many cases import raw materials and components.

Our first objective was to ascertain the value of the steamship conference system and to try to get some reaction as to the benefits which American business as a whole derives under that system, to seek possible alternatives which might result in similar advantages to our economy.

After our examination of the subject, it is the considered opinion of our association, and this has been approved by our board of direc-

tors, that the conference system substantially contributes to the stability of rates and regularity of service, provides a necessary protection for the American merchant marine, and is in the best interest of the nationaleconomy.

It is our view also that the dual-rate system is an essential concomitant without which the conference system cannot hope to survive over a period of time.

We believe this view is supported by the vast majority of those engaged in international commerce in the United States, and if there had been any marked difference of views among shippers, they would have had plenty of opportunity to indicate, because we made repeated comments on this subject in our weekly World Trade Bulletin which goes out to 2,500 firms each week.

Our study of the subject has developed no satisfactory alternate to the dual rate structure to provide an efficient and effective incentive for shippers to incur the obligations and responsibilities of the exclusive patronage and other provisions of conference contracts.

I realize that the important issue in the bill under consideration at the present time which we do endorse is a stopgap provision to provide for continuation of the dual-rate system, but we do hope that this committee will undertake, as I think you have indicated as I read in the press, Mr. Bonner, a study of the Shipping Act itself.

We have satisfied ourselves that the conference system is generally and widely endorsed by shippers.

There has, of course, been criticism of the system against the conferences but it is our conclusion that those criticisms are not against the system but against the practices of some of the conferences.

I will not go into these details because they are the subjects we would like to discuss when you make a more thorough study of the subject, except to mention the lack of uniformity of the conferences to publish tariffs and that some conferences do not publish their tariffs. We hope that we can persuade some of them to do it without legislation, but that is one of the things that we would bring up at a later date. As a matter of fact, included among the other points that we have been studying are the obligations of the shippers themselves under the contracts.

We hope to go into those details at another time.

Thank you, sir.

The CHAIRMAN. Thank you, sir.

Mr. Allen?

Mr. ALLEN. Mr. Chairman.

Mr. Sinclair, between large and small shippers which would you say would be most affected by the conference system, either most in need of it or most able to get along without it?

Mr. SINCLAIR. We come back to the definition of a large or small shipper. Are you going to do it on the basis of annual sales or number of employees or diversity of products?

Mr. ALLEN. I suppose between any two that had any difference in volume of shipping one would be large and the other small.

Mr. SINCLAIR. I do not think in this issue it makes any difference whether large or small but the regularity of service is the big factor.

The regularity of service and the ability to estimate landed costs based on stability of rates applies perhaps even with greater im-

portance to a smaller shipper who assumedly has greater competition or at least thinks he has for his lines.

Mr. ALLEN. I think it has been said that as between the man who has a carload a month and Standard Oil or United States Steel, which might ship by the shipload, that the larger shipper would be in a position to make a better deal with a carrier if the rates were free than a smaller shipper.

Mr. SINCLAIR. He undoubtedly would be. The greater protection actually is to the small shipper under the conference system.

Mr. ALLEN. Have you had any experience in observing whether there is a relationship between the conference rate and the rate offered by nonconference members?

Mr. SINCLAIR. I do not know that, sir. I think some of the shippers will testify who are directly in the field and they are more competent than I to answer that.

Mr. ALLEN. Thank you.

The CHAIRMAN. Mr. Ray.

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Dorn.

Mr. DORN. Who are members of your organization?

Mr. SINCLAIR. All types of business firms in the city and State of New York. It so happens that, because we are in a port city and because we have been active in the international trade field as an organization for many years, that about half of our membership is engaged in that field, but our membership includes all types of firms, law firms, banks, railroads, steamship companies, department stores, wholesalers, manufacturers, and all fields.

Mr. DORN. Has there been a meeting of your group deciding upon this stand or is this just your opinion expressed here?

Mr. Sinclair. We had established this position by our board about 2 years ago after this traffic committee had made this initial study.

Mr. DORN. So that really it has gone through all the members of your organization?

Mr. SINCLAIR. Oh, yes.

Mr. DORN. That was by letter and it was discussed in meetings of the organization?

Mr. SINCLAIR. We do not have full membership meetings because we have close to 4,000 members and, as a matter of fact, as you can realize on a matter of this sort, only those that would be interested in the subject would attend anyway.

Our procedure is to operate through advisory committees, this having been taken up by our export traffic committee. Its recommendations went to the board of directors which represents basically domestic fields although we have now and I think we had at the time a steamship man on the board and 2 or 3 firms that are active in the export trade.

Mr. DORN. You say 2 or 3 firms active in the export trade, and there you are referring, I take it, to manufacturers who export?

Mr. SINCLAIR. That is right.

Mr. DORN. Rather than steamship lines?

Mr. SINCLAIR. That is right.

Mr. DORN. Are very many steamship lines members of your organization?

Mr. SINCLAIR. About 40.

Mr. DORN. Now, would you feel it advisable or inadvisable to have words at the end of the bill as written that would require that all shippers know that there are two different rates?

Mr. SINCLAIR. Would I think it wise to specify that in the bill?

Mr. DORN. Either wise or unwise or do you have any opinion on it at all?

Mr. SINCLAIR. I have an offhand opinion, but I would not think it would be at all necessary because I do not know of any one who is in the business at all of doing export or import business who is not aware of the dual rate system.

Mr. DORN. Thank you very much.

The CHAIRMAN. Mr. Pelly.

Mr. PELLY. Mr. Chairman.

Mr. Sinclair, yesterday I think there was testimony to the effect that there were 24 routes in which there were conference rates. I imagine most of those except those on the Pacific coast would touch in New York; is that right?

Mr. SINCLAIR. You mean as far as the interests of our members are concerned? I have never made a survey as to how many conferences they are in, but as far as I can see without exception they are in every one of them, because many of our members have plants in the West as well.

Mr. PELLY. I would think, basically, that the exporters and importers in New York would have a direct interest in practically every conference that exists in which American lines are members.

Mr. SINCLAIR. Oh, yes, sir.

Mr. PELLY. We also had testimony to the effect that shippers would not dare testify for fear of retaliation.

Have you ever heard anything like that?

Mr. SINCLAIR. No; I have never heard of anything of that sort. I cannot understand the circumstance under which that might be possible.

It might have been possible and probably was possible under the deferred rebate system. There might have been some fear at that time going back to the Alexander report and referring to that situation, but under the present dual-rate system I cannot see any reason for any such fear; nor have I ever heard any indication that it existed.

Mr. PELLY. There are only 40 members that are steamship lines which might have some pressure as far as your chamber of commerce is concerned to favor this dual system whereas, obviously, there must be some close to 2,000 members of your organization who would protest or support this dual system through your organization without any fear of retaliation at all.

Mr. SINCLAIR. That is correct, sir, and there is a very strong feeling. We did not realize how strong it was until we started making this study 4 years ago as to the strong feeling on the part of shippers in support of this dual-rate system.

Mr. PELLY. Thank you.

The CHAIRMAN. Now, in regard to shippers being afraid to testify, did you hear the list of telegrams that I read supporting this?

Mr. SINCLAIR. Yes, sir.

The CHAIRMAN. Most of them came from New York. They testified for the bill.

Mr. SINCLAIR. That is right, sir.

The CHAIRMAN. Do you know any of them?

Mr. SINCLAIR. Yes; I know all the New York firms that you mentioned. In fact, I think they are all members of our organization.

The CHAIRMAN. We have a telegram from Harry S. Radcliffe, executive vice president, National Council of American Importers, from New York. That is a telegram supporting this proposed bill.

There is a telegram from Stanley R. Thorpe, foreign traffic manager, Eastman Kodak Co.

Did you ever hear of him?

Mr. SINCLAIR. They are in Rochester, sir.

The CHAIRMAN. They sent a telegram. There is C. D. Roxby, general traffic manager, the Nestle Co. Did you ever hear of them?

Mr. SINCLAIR. Yes, sir.

The CHAIRMAN. They are substantial exporters and importers?

Mr. SINCLAIR. They are very substantial exporters.

The CHAIRMAN. There is a telegram from Bunichiro Tanabe, president, Mitsubishi International Corp., 120 Broadway, N. Y.

Mr. SINCLAIR. That is one of the leading Japanese firms who reestablished their operations in New York after the war.

The CHAIRMAN. I could read on with telegrams here.

I will place in the record the telegrams in favor of the proposed legislation, two telegrams suggesting amendments, and a telegram and letter opposing the bills.

(The documents referred to follow:)

NEW YORK, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

I regret unable to avail myself to testify before Merchant Marine Committee. However, considering the importance of the matter I herewith express my strong desire for continuance of contract-rate system because its disruption will create instability of freight rates with resultant hardship to importers and exporters, particularly those of competitive commodities. From the interest of overseas trade, stabilized freight market is much more preferable to unstabilized cheap rate.

BUNICHIRO TANABE,
President, Mitsubishi International Corp.

WHITE PLAINS, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

We strongly favor legislation retaining present dual-rate system until June 30, 1960, to allow time for a full study of the system. We cannot emphasize too strongly that over the years this system has enabled steamship conferences to stabilize rates and services to the best interests of importers, exporters, and American foreign commerce in general.

Disruption of the system on short notice will create undue and unnecessary hardship for all concerned.

C. D. ROXBY,
General Traffic Manager, The Nestle Co., Inc.

ROCHESTER, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee,
Washington, D. C.:*

As a contract shipper we firmly believe that the steamship conference system is essential to the growth and stability of our foreign operations. We, therefore, urge that dual rates be maintained pending thorough investigation of all aspects on the ground that immediate cancellation would further endanger the already weakened conference system itself and possibly result in rates being increased to the higher or noncontract level.

STANLEY R. THORPE,
Foreign Traffic Manager, Eastman Kodak Co.

NEW YORK, N. Y., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

We wish to register our support of your proposed legislation to amend section 14 of the Shipping Act of 1916 to permit dual-rate arrangements of steamship conferences to be continued for a period of 2 years. Our organization has always supported the conference system on the grounds that this is the only practical method of maintaining stability in ocean freight rates and the best way to protect small importers against discrimination.

HARRY S. RADCLIFFE,
Executive vice president, National Council of American Importers, Inc.

SAN FRANCISCO, CALIF., June 4, 1958.

HON. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.:*

We informed 3 days of hearings on legislative bill introduced in both House of Representatives and Senate assuring uninterrupted use of contract rate system until June 30, 1960, now in progress. As a firm doing business from east coast and west coast of United States to all countries in the Far East and having been in business for some 65 years we are extremely interested in maintaining the contract system. We feel should this be set aside our business would suffer considerably due to instability of rates with a good possibility of severe financial hardship to ourselves and receives as well as to ocean carriers. We convinced through long experience that stable freight rates in our particular type of business are essential to us as shippers and we therefore heartily urge enactment of the bill now being debated.

H. A. MAGNUSON,
President, Connell Bros. Co. Ltd.

SAN FRANCISCO, CALIF., June 4, 1958.

HON. HERBERT C. BONNER,

*Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

We understand that hearings will be held this week on legislative bill to assure uninterrupted use of the steamship contract rate system until June 30, 1960. We wish to go on record as supporting this bill. Without control of orderly rate-making and stabilizing rates the results would be injurious to shippers as well as steamship lines. Foreign steamship lines with lower operating costs would be in a position to reduce rates to a point where they could destroy American shipping lines.

J. G. VOLLMAR,
General Traffic Manager, Crown-Zellerbach Corp.

SEATTLE, WASH., June 4, 1958.

HON. HERBERT C. BONNER,

*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

We favor continuation of contract rate system to insure stability overseas flour business.

CENTENNIAL MILLS, INC.

SAN FRANCISCO, June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman of the House Merchant Marine and Fisheries Committee,
Washington, D. C.:*

We are in hearty support of the present contract rate system. If not continued there will be utter chaos in trying to determine rates and we will have no stability in quoting the commodities we handle in foreign markets. We sincerely hope no damaging change is made.

ZIEL & Co., INC.

WHITE SULPHUR SPRINGS, W. VA., June 3, 1958.

HON. HERBERT BONNER,

*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

The undersigned representing the textile bag manufacturers of the United States who import large tonnages of burlap in international commerce for processing into essential domestic civilian agricultural and defense products sincerely believe that the act to amend the Shipping Act of 1916 now before your committee serves the best interests of our domestic market in that it protects the "desirable advantages of conference arrangements honestly and fairly conducted." We believe that unrestricted competition among carriers seriously threatens continuity of the supply of our raw material obtainable only by importation through shipping carriers. The disturbance or threat of disturbance of such continuity is bound to be harmful to the domestic trade in these commodities.

TEXTILE BAG MANUFACTURERS ASSOCIATION,
Evanston, Ill.

SAN FRANCISCO, CALIF., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee, Wash-
ington, D. C.:*

As exporters we support bill to extend contract rate system. We feel unstable rates would be serious obstacle to American foreign trade. Conditions are tough enough now without having to be concerned about rate fluctuations.

L. A. PHILLIPS,
Marsman Commercial Co., Inc.

SAN FRANCISCO, CALIF., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman of the House Merchant Marine and Fisheries Committee,
Washington, D. C.:*

Today received telegram from chairman, Pacific Westbound Conference, requesting my presence hearing Washington starting June 3 through 5 on legislation permit continuation dual rates in steamship conferences. While have no objection dual rates any legislation must provide for equal protection and consideration all parties concerned, i. e. manufacturers, suppliers, exporters, as well as carriers. Failure to include such protection in our opinion will seriously affect the world exports of this country. Possible safeguard provision in bill for creation of board of arbitrators consisting of disinterested parties. Regret unable attend account advise of hearing received only today.

L. L. GOODMAN,
President, Getz Bros. & Co.

SAN FRANCISCO, CALIF., June 3, 1958.

HON. HERBERT C. BONNER,

Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D. C.:

This is reference to legislation being considered to continue use of dual or contract rate system in steamship trades until June 30, 1960. The undersigned shipper of dairy products favors stability in ocean rates and continuance of existing contract system, however, recommends a provision in legislation which would require conference when they grant special commodity rate based on volume to forestall charter or tramp competition to extend their contract shippers the same incentive rates, regardless of volume and that all contract parties of the commodity involved be notified promptly of the making of such special rate.

FOREMOST DAIRIES INC.,
L. H. WOLTERS,
Transportation Manager.

SAN FRANCISCO, CALIF., June 3, 1958.

HON. HERBERT C. BONNER,

*Chairman, House Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.:*

In view Supreme Court decision May 19 in *Federal Maritime Board v. Isbrandtsen Company et al.*, outlawing exclusive patronage dual rates conference systems, we respectfully and most earnestly urge that Congress take no action to nullify or weaken the protection of the shipping public resulting from such decision. As heavy receivers of Latin American coffee we and others in like position have been helpless victims of the illegal and oppressive dual rates conference systems. Under coercion of these systems we have been forced to sign receiver's freighting agreements under protest, despite flagrant discriminatory and unfair operation of conference dual rates systems. We believe that if shipping public be given hearing by Congress, it will condemn the dual rates exclusive patronage conferences systems as a predatory practice designed to give conferences monopolies by driving out competition of independent carriers and placing shippers and receivers in defenseless position against arbitrary, unfair and discriminatory operation of systems. We earnestly urge that Congress sustain Supreme Court, Department of Justice, and Department of Agriculture in objection to these vicious and hurtful conference practices.

M. J. B. Co.

INDEPENDENT FUR BROKERS, INC.,
New York, June 2, 1958.

Representative HERBERT C. BONNER,

*Chairman, Merchant Marine Committee,
House Office Building, Washington, D. C.*

DEAR SIR: I see in the newspaper that you are going to hold hearings on a bill to legalize steamship conference dual rates which apparently finally been declared illegal by the Supreme Court.

We are very much wish to protest against any bill which restores the shippers of freight to a straight jacket. The conference system may be good for the steamship industry so that they can gouge the shippers, and the dual rate system made this gouging even worse. But it severely affects all people in foreign trade, restricts the exports of this country by making the freight cost more than it should, and thus cutting down on the number of jobs available to people in industries producing for export. At the same time it raises the cost of imports and thus raises the cost of living for all of us.

Isbrandtsen, and the Government agencies, who fought this thing deserve a commendation and it should not be overruled by a new law. The conferences have only one thing which keeps them even halfway under control and that is the independent lines, and the independents have been always put at a severe disadvantage by rules such as the dual rate system.

I could write you a long list of reasons and experiences showing how both we and others have been hurt by the existence of the dual rate system, but will not do so for the sake of brevity. Suffice to say it is the small importer and exporter who has to look to the independents for protection as neither the conferences nor the FMB offer him any.

Therefore, on behalf of my firm, I very much hope that you will see to it that this bill is not reported out and that the Supreme Court decision is allowed to stand as it should be. It is interesting to note that many of the conferences which did not have dual rate systems in the past were exactly those which quoted reasonable freight rates. The real gouging came from some of those with dual rate systems.

Yours very truly,

E. C. CLASSEN.

Mr. DORN. Would the gentleman yield at that point?

The CHAIRMAN. Yes.

Mr. DORN. All of these men ship through freight forwarders, do they not?

Mr. SINCLAIR. Not necessarily; no.

Mr. DORN. The majority probably do?

Mr. SINCLAIR. They probably do, on certain occasions, but not necessarily for all shipments.

Mr. DORN. Have we heard, Mr. Chairman, if I may ask you, from any of the freight forwarders?

Mr. SINCLAIR. At least two of the telegrams that you announced yesterday afternoon were from freight forwarders.

Mr. DORN. That is what I wanted to find out. I wanted to discover whether any of the freight forwarders were going to testify. I would think that their experience would be helpful to the committee.

The CHAIRMAN. This hearing is open. I do not know how long we will be able to run it at this sitting, but I am sure that we will have them, if they want to testify. We have a little deal examining the freight forwarders, you know.

Mr. SINCLAIR. If I might make this comment, Mr. Dorn, except under unusual circumstances, it is not my understanding that freight forwarders would be signers of conference contracts, because they are agents of either the buyer or the seller.

Mr. DORN. Yes, but I felt they would have the experience that would give us valuable testimony here with reference to the bill under discussion.

Mr. SINCLAIR. I know of no contrary view in the freight-forwarder industry against the conference or the dual-rate system, and we have about 300 freight forwarders in our membership.

Mr. DORN. Thank you.

The CHAIRMAN. You said some conferences did not publish their rates.

Mr. SINCLAIR. That is right, sir.

The CHAIRMAN. I was of the opinion that it was necessary for them to publish their rates.

Mr. SINCLAIR. It is only necessary for them to put them on file with the Federal Maritime Board.

The CHAIRMAN. That is, more or less, publishing them, is it not?

Mr. SINCLAIR. It is a little difficult, if you are an exporter in New York, to have to come to Washington to examine a file of rates.

The CHAIRMAN. What is the percentage of those that do publish and those that do not publish?

Mr. SINCLAIR. I could not tell you.

The CHAIRMAN. But the rates are available, you might say.

Mr. SINCLAIR. Yes, you might say, but not on a satisfactory basis, not satisfactory from the standpoint of an exporter.

The CHAIRMAN. A freight forwarder who handles Mr. X's business would know what these rates were; would he not?

Mr. SINCLAIR. He would know only on the basis of his past experience of handling and provided there were no changes in the rates. He would not have available a copy of the tariff, itself, for those conferences which do not publish their tariffs.

The CHAIRMAN. Did I understand you to say that your association is part of the chamber of commerce?

Mr. SINCLAIR. Well, we are a chamber-of-commerce organization, although our name does not indicate that.

The CHAIRMAN. You are not known as the chamber of commerce?

Mr. SINCLAIR. We are known as a chamber of commerce, but not by that name, of course.

The CHAIRMAN. Are there any other questions?

Counsel will inquire.

Mr. COWEN. Mr. Sinclair, you state that the tariff would be on record with Maritime as set up by the conference. The rates would be on file with Maritime, which would necessitate the shipper having to check with Maritime at a specific time and instance. I understood yesterday, from testimony, that so many of these shippers had to base their cost or their price on the rates in effect at a specific future date.

From that, would it necessitate a shipper, in every instance, to check with Maritime to see that the rates had not varied since his last contractual agreement?

Mr. SINCLAIR. They would check with the individual steamship company, more likely.

Mr. COWEN. Well, when they are dealing with a conference?

Mr. SINCLAIR. I think the general practice would be to check with the individual steamship company over which they expected to ship.

Mr. COWEN. So that, in that way, they could avoid having to check with Maritime in every instance?

Mr. SINCLAIR. It just is not practical for a shipper to try and check with the Federal Maritime Board on rates in their tariffs, because it would take much too long and be much more expensive than just checking with the carrier itself.

Mr. COWEN. I understand that, sir, but from the people for whom you speak, it would be a much simpler proposition if they published the tariff rates so that they would be where anyone could see them at any time?

Mr. SINCLAIR. Yes, sir.

Mr. COWEN. Your people feel that the conferences should, certainly, do that much?

Mr. SINCLAIR. All of them should do that; yes, sir.

Mr. COWEN. All right, sir.

The CHAIRMAN. I see Mr. Guill and Mr. Stakem here.

I am sure you are tremendously interested in this matter.

Do you want to get a seat closer by?

Our next witness will be Mr. Hudtloff, of the Department of Agriculture, who is here at my request.

STATEMENT OF MARTIN J. HUDTLOFF, DIRECTOR, TRANSPORTATION AND STORAGE SERVICES DIVISION, COMMODITY STABILIZATION SERVICE, DEPARTMENT OF AGRICULTURE

The CHAIRMAN. I am not going to ask you to make any formal statement, because I realize, and the committee realizes, your position. Will you state who you are, for the record?

Mr. HUDTLOFF. Mr. Chairman, I am Martin J. Hudtloff, Director of Transportation and Storage Services for the Department of Agriculture.

The CHAIRMAN. It has been stated here that farm interests and Agriculture join in the proceedings that brought about this hearing. What percentage of agricultural products are shipped by the Department of Agriculture on the conference lines and lines that have this dual rate?

Mr. HUDTLOFF. Mr. Chairman, I would like to answer your question on the basis of my recollection, taking a specific program, such as Public Law 480, title I, with which, I think, a lot of us are familiar.

The CHAIRMAN. For the record, will you describe that?

Mr. HUDTLOFF. That is the program under which the Department of Agriculture disposes of surplus agricultural commodities for foreign currencies and the Department guarantees the convertibility of them.

During the past year, our movements were roughly about 7½ million tons. Out of that 7½ million tons, my recollection is that between 18 and 20 percent of that total moved on liner movements which, in general, are covered by conferences. The balance of it was carried by tramps.

The CHAIRMAN. That was bulk?

Mr. HUDTLOFF. That is right, dry bulk carriers, so that out of that 7 million it would be roughly 20 percent or in the neighborhood of 1,500,000 tons.

The CHAIRMAN. That was moved by operators that have the dual-rate system?

Mr. HUDTLOFF. Yes, sir. That is the best offhand answer I can give without actually referring to the records. It would be approximately 20 percent.

The CHAIRMAN. From your observation, has this dual-rate system interfered with the program of the Department of Agriculture?

Mr. HUDTLOFF. No, sir. It has not. As a matter of fact, Mr. Chairman, at the time when the question was raised as to whether or not the Department should become a contract signer, so to speak, our attorneys questioned the legality.

The CHAIRMAN. They do not require you to sign?

Mr. HUDTLOFF. No, sir; they do not.

The CHAIRMAN. So that that answers that.

Mr. HUDTLOFF. We are not a member or a contract signer of any of the conferences.

First of all, our attorneys were of the opinion that there was some question as to the legality of it and, secondly, since we were a rather substantial shipper we thought we could make equally good or better arrangements ourselves.

The CHAIRMAN. You ship first one way and then another way?

Mr. HUDTLOFF. That is correct.

The CHAIRMAN. You have not found any disadvantage in the dual rate system?

Mr. HUDTLOFF. Not at all; no, sir.

The CHAIRMAN. The Department of Agriculture in all probability is the largest exporter of agricultural products.

Mr. HUDTLOFF. Yes, sir. That is correct. In many cases we do not actually ship them ourselves. They are carried out through private exporters but nevertheless, as far as the agricultural program itself is concerned, we are a very substantial shipper.

The CHAIRMAN. Did you get the benefit of the lower rate over what you did ship?

Mr. HUDTLOFF. Mr. Chairman, we either got the low rate or we got a better rate. We either got the 10-percent rate which was authorized by the conference or, at times, we would go directly to the conference and tell them that we had a substantial quantity to move and ask them to quote us a rate. In some cases that was lower than the 10-percent reduction.

The CHAIRMAN. How did that come about?

Mr. HUDTLOFF. The conference agreed to it if we would use their conference exclusively.

The CHAIRMAN. It was a conference agreement that on account of this special movement by the Government they would give you a special rate?

Mr. HUDTLOFF. That is correct.

The CHAIRMAN. You were not confined to any individual company in getting that rate; were you?

Mr. HUDTLOFF. No, sir.

The CHAIRMAN. It was anybody in the conference?

Mr. HUDTLOFF. It was anyone participating in the conference. We generally agreed that we would give it to any member of the conference.

The CHAIRMAN. In shipping with independents not in the conference, what was your experience?

Mr. HUDTLOFF. Well, we found that where the independent company actually wanted the business that they came out with a very good rate.

In some instances it was below the 10-percent discount recognized by the conference.

The CHAIRMAN. In some instances?

Mr. HUDTLOFF. Yes, sir.

The CHAIRMAN. But not in all instances?

Mr. HUDTLOFF. I think it depended largely upon whether or not they wanted the movement.

The CHAIRMAN. Could you depend on them as much as you could on the conference membership?

Mr. HUDTLOFF. Well, that is rather hard to answer "yes" or "no," because when we had a substantial movement we usually contacted both of them. If the nonconference member or members were really interested in that particular movement, the chances are that they would give us a very substantial reduction. If they did not, then we usually wound up negotiating with the conference itself.

We have had varied reactions.

The CHAIRMAN. May I ask you in this way: The conference membership were always there?

Mr. HUDTLOFF. That is correct.

The CHAIRMAN. And they would accept your shipments at any time whereas you had to contact the independent to see if you could get him; is that correct?

Mr. HUDTLOFF. That is correct, Mr. Bonner.

The CHAIRMAN. So that, without the dependability of the conference membership you might have found yourself in a position where you could not have moved your freight at a favorable rate?

Mr. HUDTLOFF. Yes; I think that is a correct statement.

The CHAIRMAN. Mr. Allen.

I want to say that Mr. Hudtloff is here at the request of the Chair. I have him here as a sort of freewill witness. His operations came up. As I hear it, the Department of Agriculture intervened in this matter before the court. Mr. Hudtloff, I want to protect your position and assure you that if there is anything you do not want to testify about it will be perfectly agreeable. You just say you would rather not.

Mr. ALLEN. Mr. Hudtloff, in the occasions when you dealt for a better rate than the conference contract rate, were you in a position where you had a possible competition in shipping cargoes in bulk by the shipload as against shipping them in parcel lots on berth liners.

Mr. HUDTLOFF. Yes. That is true. In other words, we would generally specify the quantity that was involved. We would tell them it was 50,000 tons or 60,000 tons and that same quantity could have moved by a bulk carrier.

Mr. ALLEN. In saying that you are the major shipping agency of agricultural products, do you have any breakdown as to the percentage of the export grain, the export cotton, the export canned goods that the Department handles?

Mr. HUDTLOFF. You mean for which we actually make the booking? Is that what you have in mind, or for which we arrange the ocean transportation?

Mr. ALLEN. I mean that for which you arrange the ocean transportation, by commodities or classes of commodities.

Mr. HUDTLOFF. Yes, we do.

Mr. ALLEN. What would you say you handle in the largest shipments?

Mr. HUDTLOFF. Wheat.

Mr. ALLEN. What would come second?

Mr. HUDTLOFF. Probably one of the feed grains, corn, barley, oats, rye.

Mr. ALLEN. Can you give us the list? I am particularly curious as to where the canned products come into your handling and what percentage of those you ship.

Mr. HUDTLOFF. The only canned products that we would have would be dried skim milk. Most of the commodities that I am speaking of, Mr. Congressman, are those which are in surplus; in other words, those which have been acquired under the price-support program, and we do not get them in processed form, so to speak, that is cans. We do acquire this milk and that is canned for export shipment.

Mr. ALLEN. That brings me to the next question.

Do you know what the values of the various categories of products are, the wheat, for example, the canned processed foods, the cotton, for example?

Mr. HUDTLOFF. Yes.

Mr. ALLEN. What would they be?

Mr. HUDTLOFF. The total?

Mr. ALLEN. No, the individual items.

Mr. HUDTLOFF. I do not know whether I thoroughly understand your question, Mr. Allen.

Mr. ALLEN. What would be the value of the wheat that is exported in a year?

Mr. HUDTLOFF. Mr. Allen, could I ask you this question: Do you mean for which we arrange the ocean transportation or that the Department of Agriculture either exports itself or through private exporters?

Mr. ALLEN. Actually, I would like both, if you have it.

I would imagine that some of the big packers actually ship a considerable amount of produce which represents a great number of individual farmers, and as for them it is the arrangement that the packer might make. As to the surplus wheat, the farmers themselves, through the Commodity Credit Corporation, are represented by you, and I am curious as to how many farmers and how much money the Department represents so as to find out how to evaluate the testimony of the various witnesses.

Mr. HUDTLOFF. We could give you a statement showing the exports in which the Department has a direct interest, either they themselves are exporting them or that they are being exported under programs that are carried out by the Department, such as Public Law 480, or where they do some work for the International Cooperation Administration. We could give you a statement of that broken down by commodity, by tonnage and by value.

Mr. ALLEN. I would appreciate having that in the record if it might be included, Mr. Chairman.

The CHAIRMAN. If you will give us the memorandum, we will put it in the record.

Mr. HUDTLOFF. I will be glad to do so.

Mr. ALLEN. Could you include the total United States export figures as to each of the commodities you list?

Mr. HUDTLOFF. May I have that question again?

Mr. ALLEN. Would you include the total United States export figure for each of the commodities that you might list?

Mr. HUDTLOFF. Yes.

(The information referred to follows:)

UNITED STATES DEPARTMENT OF AGRICULTURE, COMMODITY CREDIT CORPORATION,
REPORT OF TITLE I OPERATIONS (PUBLIC LAW 480)

[No. 60. Period covered: Inception through Apr. 16, 1958]

Sales of surplus commodities for foreign currencies

SUMMARY BY COMMODITY—CUMULATIVE TO DATE

[Data in thousands]

Commodity	Purchase authorizations issued ¹			Estimated CCC investment plus cost of financing ⁴
	Quantity (approximate)	Commodity amount ²	Ocean transportation ³	
Barley.....	1,308.0 metric tons.....	\$65,909	\$10,802	\$114,190
Beans, dry edible.....	2.3 metric tons.....	361		435
Beef, fresh, frozen, or canned.....	57.2 metric tons.....	30,459	3,168	33,627
Bulgur.....	7.1 metric tons.....	700	106	806
Butter.....	14.0 metric tons.....	12,145	30	20,518
Butter oil.....	0.7 metric tons.....	882		1,384
Cheese.....	8.9 metric tons.....	4,774	272	9,495
Corn.....	1,563.9 metric tons.....	87,469	7,944	173,248
Cotton, upland.....	2,998.6 bales.....	480,865	3,392	642,979
Cotton linters.....	4.1 metric tons.....	300	74	374
Cottonseed oil, crude.....	3.0 metric tons.....	1,206	68	1,275
Cottonseed oil, refined.....	177.1 metric tons.....	61,955	1,388	69,143
Cottonseed oil and/or soybean oil.....	346.2 metric tons.....	122,070	5,105	127,175
Fruits and juices, canned.....	15.8 metric tons.....	3,898		3,898
Fruits, fresh.....	24.5 metric tons.....	2,960		2,960
Fruits, dried.....	21.9 metric tons.....	6,599	95	6,599
Ghee.....	3.7 metric tons.....	4,590	134	7,985
Grain sorghum.....	296.9 metric tons.....	12,847	1,914	22,208
Grain sorghum, hardy, corn.....	76.0 metric tons.....	3,811		5,926
Lard.....	97.2 metric tons.....	29,954	1,093	30,751
Linseed oil.....	5.9 metric tons.....	1,839	38	2,603
Milk, anhydrous.....	0.6 metric tons.....	674	4	1,053
Milk, condensed.....	3.2 metric tons.....	1,916		1,916
Milk, dry nonfat.....	48.9 metric tons.....	12,014	71	21,776
Milk, dry whole.....	1.7 metric tons.....	1,699	31	1,730
Milk, evaporated.....	10.1 metric tons.....	3,283	58	3,341
Oats.....	97.2 metric tons.....	5,422	904	9,160
Pork, canned and cured.....	12.2 metric tons.....	10,288	147	10,435
Potatoes.....	23.1 metric tons.....	1,392	406	1,798
Poultry, canned and frozen.....	2.0 metric tons.....	1,781		1,781
Rice, milled.....	1,177.6 metric tons.....	171,379	11,544	280,216
Seeds, hay and pasture.....	0.4 metric tons.....	400	24	424
Soybean oil.....	341.3 metric tons.....	129,282	3,961	133,327
Tallow.....	79.4 metric tons.....	17,524	835	18,359
Tohacco.....	81.8 metric tons.....	124,945	1,675	126,467
Wheat and/or wheat flour.....	13,959.5 metric tons.....	915,452	110,751	1,631,059
Whey, dry.....	0.9 metric tons.....	147		147
Total.....		2,333,191	166,034	3,520,568

Commodity amount and ocean transportation (thousands)	Amount (thousands)
Control Office:	
Evanston, Ill.....	\$105,101
Cincinnati, Ohio.....	148,315
Kansas City, Mo.....	357,406
Minneapolis, Minn.....	50,676
New Orleans, La.....	795,681
Dallas, Tex.....	474,573
Portland, Ore.....	276,494
Washington, D. C.....	124,945
Washington, D. C. (ocean transportation).....	166,034
Total.....	2,499,225
Total purchase authorizations issued.....	\$3,520,568
Committed programs ⁵	290,529
Interest on CCC investment (February 1958).....	82,661
Total estimated use.....	3,893,758
Dollar reimbursement to CCC for foreign currencies used (February 1958).....	117,900
Foreign currencies used for housing projects under Public Law 161 (February 1958).....	26,666
Title I authorization total.....	4,000,000
Less total estimated use.....	3,893,758
Estimated balance available.....	250,808

See footnotes at end of table, p. 110.

SUMMARY BY COUNTRY—CUMULATIVE TO DATE

[Data in thousands]

Country	Purchase authorizations issued ¹		Estimated CCC investment plus cost of financing ⁴	Country	Purchase authorizations issued ¹		Estimated CCC investment plus cost of financing ⁴
	Commodity amount ²	Ocean transportation ³			Commodity amount ²	Ocean transportation ³	
Argentina.....	\$30,970	\$128	\$34,406	Italy.....	\$148,031	\$1,115	\$190,248
Austria.....	39,692	2,521	60,985	Japan.....	149,165	399	207,485
Brazil.....	77,274		129,575	Korea.....	113,971	12,937	162,733
Burma.....	22,569		32,109	Mexico.....	26,600	1,147	63,090
Chile.....	37,066	3,068	54,878	Netherlands.....	275		396
China, Republic of.....	9,683		12,388	Pakistan.....	168,732	15,738	281,967
Colombia.....	32,628		44,089	Paraguay.....	2,600	395	4,443
Ecuador.....	8,057		10,035	Peru.....	17,438	1,654	31,580
Egypt.....	19,174		36,091	Philippines.....	10,302		15,073
Finland.....	33,178	2,541	47,395	Poland.....	117,282	6,404	179,921
France.....	27,050	586	31,606	Portugal.....	7,095		13,494
Germany.....	1,200		1,200	Spain.....	234,890	13,820	275,728
Greece.....	56,453	2,038	86,959	Thailand.....	4,600		4,907
Iceland.....	2,709	75	3,577	Turkey.....	136,552	20,141	221,747
India.....	317,956	33,227	520,986	United Kingdom.....	43,150	414	43,564
Indonesia.....	87,797	4,612	135,472	Yugoslavia.....	252,930	40,406	431,949
Iran.....	12,854		20,920				
Israel.....	83,263	2,668	129,572	Total.....	2,333,191	166,034	3,520,568

SUMMARY OF REPORTED SHIPMENTS BY COMMODITY—CUMULATIVE TO DATE

[Data in thousands]

Commodity	Quantity	Estimated CCC investment plus cost of financing
Barley.....	763.4 metric tons.....	\$61,673
Beans, dry edible.....	2.1 metric tons.....	673
Beef.....	42.2 metric tons.....	30,277
Butter.....	7.5 metric tons.....	10,923
Butter oil.....	2.7 metric tons.....	5,056
Cheese.....	4.4 metric tons.....	4,152
Corn.....	1,018.5 metric tons.....	94,110
Cotton linters.....	1.9 metric tons.....	256
Cotton, upland.....	2,339.3 bales.....	512,967
Cottonseed oil, crude.....	3.2 metric tons.....	1,344
Cottonseed oil, refined.....	236.2 metric tons.....	94,279
Fruit, canned.....	7.3 metric tons.....	1,781
Fruit, dried.....	14.7 metric tons.....	4,730
Fruit, fresh and juices.....	11.3 metric tons.....	2,066
Grain sorghum.....	163.6 metric tons.....	14,652
Lard.....	81.6 metric tons.....	26,555
Linseed oil.....	3.5 metric tons.....	1,432
Milk, condensed and condensed sweet.....	3.8 metric tons.....	1,900
Milk, dry nonfat.....	21.3 metric tons.....	8,769
Milk, dry whole, and anhydrous.....	1.3 metric tons.....	1,717
Milk, evaporated.....	8.4 metric tons.....	2,665
Oats.....	92.9 metric tons.....	8,706
Pork.....	9.1 metric tons.....	10,341
Potatoes.....	23.1 metric tons.....	1,798
Poultry.....	2.1 metric tons.....	1,197
Rice, milled.....	1,117.9 metric tons.....	255,589
Seeds, hay and pasture.....	0.4 metric ton.....	418
Soybean oil.....	386.9 metric tons.....	145,075
Tallow.....	83.2 metric tons.....	17,795
Tobacco.....	70.5 metric tons.....	110,264
Wheat and wheat flour.....	12,317.4 metric tons.....	1,388,997
Whey, dry.....	0.9 metric ton.....	147
Total.....		2,822,30

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE

[Data in thousands]

Country	Purchase authorization No.	Shipments reported		Estimated CCC investment plus cost of financing
		Commodity	Quantity	
Argentina.....	14-01	Cottonseed oil, refined.....	19.4 metric tons.....	\$88,211
Do.....	14-02	do.....	71.3 metric tons.....	26,195
Total.....				34,406
Austria.....	21-01	Corn.....	80.4 metric tons.....	6,724
Do.....	21-02	Tobacco.....	0.3 metric tons.....	509
Do.....	21-03	Cotton, upland.....	2.5 bales.....	497
Do.....	21-04	Wheat.....	55.5 metric tons.....	7,119
Do.....	21-05	Corn.....	105.6 metric tons.....	9,504
Do.....	21-06	Cotton, upland.....	32.6 bales.....	7,484
Do.....	21-07	Tobacco.....	2.2 metric tons.....	3,049
Do.....	21-08	Lard.....	8.8.....	2,513
Do.....	21-09	Dried fruit.....	0.6 metric tons.....	163
Do.....	21-10	Canned fruit.....	0.02 metric tons.....	5
Do.....	21-11	Cotton, upland.....	2.6 bales.....	594
Do.....	21-12	Corn.....	51.4 metric tons.....	5,391
Do.....	21-13	Wheat.....	30.2 metric tons.....	3,255
Do.....	21-14	Tobacco.....	0.2 metric tons.....	304
Do.....	21-15	Cotton, upland.....	10.3 bales.....	2,417
Do.....	21-17	Corn.....	20.3 metric tons.....	1,163
Do.....	21-18	Tobacco.....	0.7 metric tons.....	1,000
Total.....				51,691
Brazil.....	28-01	Wheat.....	481.7 metric tons.....	\$62,630
Do.....	28-02	Lard.....	4.7 metric tons.....	1,497
Do.....	28-03	Corn.....	9.4 metric tons.....	738
Do.....	28-04	Wheat flour.....	18.1 metric tons.....	2,392
Do.....	28-05	Tobacco.....	0.06 metric tons.....	243
Do.....	28-06	Wheat.....	48.9 metric tons.....	5,932
Do.....	28-08	do.....	260.9 metric tons.....	28,987
Do.....	28-09	Lard.....	2.7 metric tons.....	1,281
Do.....	28-10	Wheat.....	147.8 metric tons.....	15,119
Do.....	28-11	Cottonseed oil, refined.....	1.6 metric tons.....	762
Total.....				119,581
Burma.....	33-01	Milk, evaporated.....	2.0 metric tons.....	629
Do.....	33-02	Tobacco.....	0.3 metric tons.....	498
Do.....	33-03	Cotton, upland.....	18.0 bales.....	3,969
Do.....	33-04	do.....	59.6 bales.....	13,558
Do.....	33-05	do.....	17.3 bales.....	3,852
Do.....	33-06	Canned fruit.....	0.3 metric tons.....	102
Do.....	33-07	Dried fruit.....	0.1 metric tons.....	63
Do.....	33-08	Cotton, upland.....	19.3 bales.....	4,700
Do.....	33-09	Milk, condensed.....	3.0 metric tons.....	1,490
Do.....	33-10	Tobacco.....	0.2 metric tons.....	285
Do.....	33-11	do.....	0.1 metric tons.....	250
Do.....	33-12	do.....	0.3 metric tons.....	461
Total.....				29,857
Chile.....	12-01	Cottonseed oil, refined.....	7.3 metric tons.....	3,120
Do.....	12-02	Wheat.....	36.6 metric tons.....	3,786
Do.....	12-03	do.....	113.3 metric tons.....	12,570
Do.....	12-04	Cotton, upland.....	31.1 bales.....	7,602
Do.....	12-05	Soybean oil.....	11.8 metric tons.....	4,172
Do.....	12-05	Cottonseed oil, refined.....	2.0 metric tons.....	816
Do.....	12-06	Soybean oil.....	22.0 metric tons.....	8,023
Do.....	12-08	Tobacco.....	0.1 metric ton.....	262
Do.....	12-11	Seeds, hay and pasture.....	0.4 metric ton.....	418
Do.....	12-12	Wheat.....	57.9 metric tons.....	6,850
Do.....	12-13	Cotton, upland.....	12.2 bales.....	2,827
Do.....	12-14	Wheat.....	32.6 metric tons.....	3,153
Total.....				53,599

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authorization No.	Shipments reported		Estimated CCC investment plus cost of financing
		Commodity	Quantity	
China.....	37-01	Tallow.....	5.2 metric tons.....	\$1,065
Do.....	37-02	Tobacco.....	0.7 metric tons.....	1,294
Do.....	37-03	Cotton, upland.....	41.0 bales.....	8,225
Do.....	37-04	Milk, evaporated.....	0.5 metric ton.....	185
Do.....	37-05	Milk, condensed sweet.....	0.8 metric ton.....	410
Do.....	37-06	Milk, dry whole.....	0.6 metric ton.....	931
Do.....	37-07	Tobacco.....	0.2 metric ton.....	426
Total.....				12,536
Colombia.....	25-01	Wheat.....	22.2 metric tons.....	\$ 3,028
Do.....	25-02	Cottonseed oil, refined.....	3.0 metric tons.....	\$ 1,123
Do.....	25-03	Cotton, upland.....	8.3 bales.....	\$ 1,612
Do.....	25-04	Cottonseed oil, refined.....	3.6 metric tons.....	\$ 1,566
Do.....	25-05	Wheat.....	49.2 metric tons.....	\$ 6,987
Do.....	25-06	Cotton, upland.....	32.7 bales.....	6,973
Do.....	25-07	Wheat.....	34.0 metric tons.....	3,720
Do.....	25-08	Wheat flour.....	4.6 metric tons.....	329
Do.....	25-09	Cotton, upland.....	11.2 bales.....	2,785
Do.....	25-10	Cottonseed oil, refined.....	2.0 metric tons.....	902
Do.....	25-10	Soybean oil.....	0.8 metric tons.....	266
Do.....	25-11	Wheat flour (cracker).....	1.7 metric tons.....	119
Total.....				29,410
Ecuador.....	29-01	Wheat.....	14.9 metric tons.....	\$ 2,097
Do.....	29-02	Cottonseed oil, refined.....	3.7 metric tons.....	1,459
Do.....	29-02	Cottonseed oil, crude.....	0.2 metric tons.....	69
Do.....	29-02	Soybean oil.....	0.2 metric tons.....	78
Do.....	29-03	Tobacco.....	0.1 metric tons.....	\$ 209
Do.....	29-04	Cotton, upland.....	1.7 bales.....	\$ 400
Do.....	29-05	Wheat.....	13.4 metric tons.....	1,528
Do.....	29-06	Tobacco.....	.04 metric tons.....	76
Do.....	29-08	Tallow.....	2.6 metric tons.....	625
Do.....	29-09	Cottonseed oil, refined.....	3.6 metric tons.....	1,394
Do.....	29-09	Soybean oil.....	0.8 metric tons.....	292
Total.....				8,227
Egypt.....	30-01	Wheat.....	81.1 metric tons.....	10,225
Do.....	30-02	do.....	82.4 metric tons.....	\$ 10,316
Do.....	30-03	do.....	129.8 metric tons.....	\$ 15,550
Total.....				36,091
Finland.....	18-01	Tobacco.....	1.8 metric tons.....	\$ 2,236
Do.....	18-02	Cotton, upland.....	14.6 bales.....	\$ 2,936
Do.....	18-04	Wheat.....	90 metric tons.....	\$ 11,960
Do.....	18-05	Tobacco.....	2.6 metric tons.....	\$ 3,237
Do.....	18-06	Corn.....	16.8 metric tons.....	\$ 1,650
Do.....	18-07	Cotton, upland.....	17.8 bales.....	4,239
Do.....	18-08	Fruit, dried.....	3.4 metric tons.....	\$ 1,125
Do.....	18-09	Fruit, fresh pears.....	0.5 metric tons.....	\$ 75
Do.....	18-10	Corn.....	20.2 metric tons.....	2,299
Do.....	18-11	Wheat.....	4.5 metric tons.....	545
Do.....	18-12	Tobacco.....	0.9 metric ton.....	1,018
Do.....	18-13	Wheat.....	21.4 metric tons.....	2,512
Do.....	18-14	Cotton, upland.....	5.9 bales.....	1,449
Do.....	18-15	Fruit, dried.....	0.4 metric ton.....	140
Total.....				35,421
France.....	27-01	Tobacco.....	0.4 metric ton.....	\$ 650
Do.....	27-02	do.....	1.4 metric tons.....	1,400
Do.....	27-03	do.....	0.9 metric ton.....	1,171
Do.....	27-04	Cotton, upland.....	32.1 bales.....	5,304
Total.....				8,525

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authori- zation No.	Shipments reported		Estimated CCC in- vestment plus cost of financing
		Commodity	Quantity	
Germany.....	31-01	Poultry.....	2.1 metric tons.....	\$1, 197
Greece.....	26-01	Wheat.....	56.3 metric tons.....	7, 719
Do.....	26-02	Soybean oil.....	6.4 metric tons.....	2, 207
Do.....	26-02	Lard.....	.005 metric tons.....	3
Do.....	26-03	Oats.....	19.0 metric tons.....	1, 579
Do.....	26-04	Corn.....	26.9 metric tons.....	2, 741
Do.....	26-05	Milk, evaporated.....	3.8 metric tons.....	1, 181
Do.....	26-06	Wheat.....	26.3 metric tons.....	3, 559
Do.....	26-07	Cheese.....	0.6 metric tons.....	535
Do.....	26-08	Milk, dry, nonfat.....	4.4 metric tons.....	1, 733
Do.....	26-09	Whey, dry.....	0.9 metric tons.....	147
Do.....	26-10	Soybean oil.....	15.5 metric tons.....	6, 081
Do.....	26-11	Wheat.....	14.2 metric tons.....	1, 813
Do.....	26-12	do.....	82.1 metric tons.....	8, 189
Do.....	26-13	Oats.....	13.9 metric tons.....	1, 398
Do.....	26-14	Barley.....	18.8 metric tons.....	1, 645
Do.....	26-15	Corn.....	20.0 metric tons.....	1, 353
Do.....	26-16	Soybean oil.....	15.0 metric tons.....	5, 988
Do.....	26-19	Wheat.....	68.9 metric tons.....	7, 093
Do.....	26-20	Milk, evaporated.....	1.5 metric tons.....	483
Do.....	26-21	Cheese.....	0.3 metric tons.....	274
Do.....	26-22	Wheat.....	76.4 metric tons.....	8, 050
Do.....	26-23	do.....	1.8 metric tons.....	240
Do.....	26-24	Corn.....	9.3 metric tons.....	1, 059
Do.....	26-25	Milk, evaporated.....	0.6 metric tons.....	187
Do.....	26-26	Cheese.....	0.06 metric tons.....	68
Do.....	26-27	Wheat.....	57.5 metric tons.....	6, 035
Do.....	26-30	Corn.....	34.7 metric tons.....	3, 327
Do.....	26-31	Oats.....	10.1 metric tons.....	729
Do.....	26-32	Barley.....	20.4 metric tons.....	1, 874
Total.....				77, 290
Iceland.....	40-01	Wheat flour.....	8.4 metric tons.....	609
Do.....	40-02	Cottonseed oil (salad).....	0.1 metric tons.....	46
Do.....	40-02	Soybean oil.....	0.1 metric tons.....	51
Do.....	40-04	Cotton, upland.....	0.4 bales.....	107
Do.....	40-05	Fruit, fresh.....	1.5 metric tons.....	285
Do.....	40-06	Fruit juice, canned.....	0.2 metric tons.....	38
Do.....	40-07	Corn, cracked.....	6.0 metric tons.....	620
Do.....	40-08	Barley.....	4.7 metric tons.....	508
Do.....	40-09	Tobacco.....	0.2 metric tons.....	394
Do.....	40-10	Linseed oil.....	0.3 metric tons.....	124
Do.....	40-11	Fruit, dried.....	0.2 metric tons.....	87
Do.....	40-12	Fresh pears.....	0.2 metric tons.....	40
Do.....	40-13	Fresh fruit.....	0.02 metric tons.....	3
Do.....	40-14	Fruit, canned.....	0.04 metric tons.....	15
Total.....				2, 927
India.....	39-01	Wheat.....	1,107.5 metric tons.....	123, 627
Do.....	39-02	Rice, milled.....	196.8 metric tons.....	51, 013
Do.....	39-03	Cotton, upland.....	123.7 bales.....	31, 152
Do.....	39-04	Wheat.....	381.4 metric tons.....	38, 399
Do.....	39-05	do.....	877.3 metric tons.....	100, 164
Do.....	39-06	do.....	645.7 metric tons.....	71, 001
Do.....	39-08	Tobacco.....	0.1 metric tons.....	256
Do.....	39-09	Cotton, upland.....	36.6 bales.....	9, 033
Do.....	39-10	Tobacco.....	0.9 metric tons.....	2, 013
Do.....	39-11	Milk, dry nonfat.....	5.0 metric tons.....	1, 959
Do.....	39-12	Wheat.....	421.7 metric tons.....	43, 642
Total.....				472, 259
Indonesia.....	34-01	Rice, milled.....	173.5 metric tons.....	41, 412
Do.....	34-02	Wheat flour.....	41.1 metric tons.....	5, 738
Do.....	34-03	Tobacco.....	5.7 metric tons.....	6, 664
Do.....	34-04	Cotton, upland.....	13.5 bales.....	3, 155
Do.....	34-05	Rice, milled.....	70.9 metric tons.....	15, 298
Do.....	34-06	Cotton, upland.....	20.2 bales.....	4, 382
Do.....	34-07	do.....	3.0 bales.....	616
Do.....	34-08	do.....	3.1 bales.....	789
Do.....	34-09	do.....	51.1 bales.....	9, 766

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authori- zation No.	Shipments reported		Estimated CCC in- vestment plus cost of financing
		Commodity	Quantity	
Indonesia	34-10	Wheat flour	42.7 metric tons	\$5,623
Do.	34-11	Cotton, upland	94.4 bales	21,121
Do.	34-12	Tobacco	3.0 metric tons	4,428
Do.	34-13	Cotton, upland	22.3 bales	5,372
Do.	34-14	Rice, milled	25.0 metric tons	6,675
Do.	34-15	Wheat flour	2.9 metric tons	182
Do.	34-16	Tobacco	2.0 metric tons	3,170
Do.	34-17	Cotton, upland	0.6 bale	156
Total				134,547
Iran	32-01	Wheat	59.9 metric tons	\$ 8,820
Do.	32-02	Butter oil	0.7 metric tons	1,363
Do.	32-05	Wheat	64.1 metric tons	8,169
Do.	32-06	do	20.2 metric tons	2,449
Total				20,801
Israel	16-01	Wheat	49.3 metric tons	\$ 6,314
Do.	16-02	Grain sorghum	38.1 metric tons	\$ 3,168
Do.	16-03	Butter	1.1 metric tons	\$ 1,836
Do.	16-04	Cottonseed oil, refined	2.2 metric tons	\$ 902
Do.	16-05	Cotton, upland	5.4 bales	\$ 1,115
Do.	16-06	Tobacco	0.1 metric ton	\$ 204
Do.	16-07	Wheat	31.5 metric tons	4,030
Do.	16-08	Grain sorghum	30.7 metric tons	\$ 2,324
Do.	16-08	Barley	9.7 metric tons	\$ 929
Do.	16-09	Rice, milled	0.3 metric tons	\$ 49
Do.	16-10	Wheat	93.9 metric tons	\$ 12,357
Do.	16-11	Barley	19.3 metric tons	1,881
Do.	16-11	Grain sorghum	58.0 metric tons	3,912
Do.	16-11	Corn	1.9 metric tons	131
Do.	16-12	Cotton, upland	7.6 bales	1,595
Do.	16-13	Milk, dry nonfat	1.2 metric tons	\$ 482
Do.	16-14	Butter	2.1 metric tons	\$ 2,890
Do.	16-15	Cheese	0.6 metric tons	\$ 504
Do.	16-16	Beans, dry edible	1.9 metric tons	\$ 352
Do.	16-17	Cottonseed oil, refined	6.0 metric tons	\$ 2,342
Do.	16-18	Tobacco	0.1 metric tons	\$ 192
Do.	16-19	Beef	11.2 metric tons	\$ 9,999
Do.	16-20	Wheat	77.5 metric tons	7,855
Do.	16-22	Cheese	1.6 metric tons	1,432
Do.	16-23	Tallow	0.5 metric tons	\$ 106
Do.	16-24	Corn	36.4 metric tons	\$ 2,315
Do.	16-25	do	33.0 metric tons	3,370
Do.	16-26	Wheat	9.6 metric tons	959
Do.	16-27	do	1.1 metric tons	107
Do.	16-28	do	28.6 metric tons	2,745
Do.	16-29	do	117.8 metric tons	11,516
Do.	16-30	Soybean oil	1.1 metric tons	413
Do.	16-30	Cottonseed oil, refined	2.4 metric tons	959
Do.	16-31	Tallow	1.6 metric tons	370
Do.	16-32	Fruit, dried	0.3 metric tons	100
Do.	16-33	Cotton, upland	4.1 bales	853
Do.	16-34	Tobacco	0.07 metric tons	104
Do.	16-35	Milk, dry nonfat	8 metric tons	3,350
Do.	16-36	Milk, dry whole	0.2 metric tons	207
Do.	16-37	Butter	4.2 metric tons	6,101
Do.	16-38	Cheese	0.7 metric ton	689
Do.	16-39	Grain sorghum	36.8 metric tons	5,248
Do.	16-40	Corn	31.4 metric tons	3,853
Total				110,160
Italy	20-01	Tobacco	1.9 metric tons	3,247
Do.	20-03	Cotton, upland	215.4 bales	49,473
Do.	20-04	Corn	47.6 metric tons	\$ 2,942
Do.	20-05	Wheat	24.4 metric tons	\$ 3,364
Do.	20-06	Soybean oil	5.6 metric tons	\$ 2,165
Do.	20-06	Cottonseed oil, refined	6.1 metric tons	\$ 2,409
Do.	20-07	Soybean oil	13.2 metric tons	\$ 4,506
Do.	20-08	Tobacco	1.3 metric tons	\$ 2,233
Do.	20-09	Soybean oil	56.3 metric tons	20,331

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authori- zation No.	Shipments reported		Estimated CCC in- vestment plus cost of financing
		Commodity	Quantity	
Italy.....	20-10	Tobacco.....	1.1 metric tons.....	\$2,012
Do.....	20-11	Cotton, upland.....	192.9 bales.....	44,294
Do.....	20-13	Tobacco.....	0.9 metric ton.....	1,547
Do.....	20-17	Cotton, upland.....	6 bales.....	1,342
Do.....	20-18	Corn.....	29.7 metric tons.....	3,579
Total.....				143,444
Japan.....	22-01	Rice, milled.....	97.2 metric tons.....	\$19,745
Do.....	22-02	Wheat.....	372.5 metric tons.....	\$39,373
Do.....	22-03	Barley.....	56.8 metric tons.....	\$4,680
Do.....	22-04	Tobacco.....	3.0 metric tons.....	\$5,105
Do.....	22-05	Cotton, upland.....	187.1 bales.....	\$34,991
Do.....	22-06	Barley.....	18.7 metric tons.....	1,283
Do.....	22-07	Wheat.....	348.9 metric tons.....	33,809
Do.....	22-08	Barley.....	80.9 metric tons.....	\$5,954
Do.....	22-09	Cotton, upland.....	132.3 bales.....	29,092
Do.....	22-10	Tobacco.....	1.4 metric tons.....	\$2,717
Do.....	22-11	Corn.....	50.9 metric tons.....	\$6,198
Do.....	22-13	do.....	9.4 metric tons.....	1,067
Do.....	22-14	Wheat.....	121.7 metric tons.....	13,132
Do.....	22-15	Corn.....	39.0 metric tons.....	4,432
Total.....				201,578
Korea.....	24-01	Cotton, upland.....	55.9 bales.....	\$9,991
Do.....	24-02	Tobacco.....	2.8 metric tons.....	\$4,848
Do.....	24-03	Wheat.....	113.7 metric tons.....	12,320
Do.....	24-04	Barley.....	200.9 metric tons.....	14,221
Do.....	24-05	Pork, canned.....	6.8 metric tons.....	8,249
Do.....	24-06	Tobacco.....	1.1 metric tons.....	2,126
Do.....	24-07	Milk, dry whole.....	0.1 metric tons.....	100
Do.....	24-09	Cheese.....	0.4 metric tons.....	452
Do.....	24-12	Rice, milled.....	66.1 metric tons.....	12,734
Do.....	24-13	Cotton, upland.....	3.3 bales.....	562
Do.....	24-14	Rice, milled.....	60.4 metric tons.....	11,978
Do.....	24-15	Barley.....	48.2 metric tons.....	3,924
Do.....	24-16	do.....	30.1 metric tons.....	2,239
Do.....	24-17	Wheat.....	34.2 metric tons.....	3,521
Do.....	24-18	Rice, milled.....	11.0 metric tons.....	2,244
Do.....	24-19	Lard.....	1.2 metric tons.....	505
Do.....	24-20	Wheat.....	65.0 metric tons.....	6,111
Total.....				96,125
Mexico.....	43-01	Corn.....	155.9 metric tons.....	13,747
Netherlands.....	38-01	Cotton, upland.....	1.8 bales.....	\$324
Pakistan.....	15-01	Tobacco.....	0.7 metric tons.....	1,348
Do.....	15-02	Butter oil.....	2.0 metric tons.....	3,693
Do.....	15-03	Linseed oil.....	1.4 metric tons.....	677
Do.....	15-04	Cotton, upland.....	0.3 bales.....	70
Do.....	15-05	do.....	45.9 bales.....	9,875
Do.....	15-06	do.....	7.5 bales.....	1,708
Do.....	15-07	do.....	4.0 bales.....	916
Do.....	15-08	do.....	6.6 bales.....	1,434
Do.....	15-09	do.....	1.5 bales.....	325
Do.....	15-10	do.....	47.2 bales.....	9,419
Do.....	15-11	do.....	2.3 bales.....	461
Do.....	15-12	do.....	4.2 bales.....	870
Do.....	15-13	do.....	5.6 bales.....	1,139
Do.....	15-14	Tobacco.....	0.9 metric tons.....	1,715
Do.....	15-15	do.....	0.2 metric tons.....	287
Do.....	15-16	Rice, milled.....	126.0 metric tons.....	28,900
Do.....	15-17	Wheat.....	226.2 metric tons.....	22,424
Do.....	15-18	Tobacco.....	0.8 metric tons.....	1,501
Do.....	15-19	Rice, milled.....	135.5 metric tons.....	32,756
Do.....	15-20	Cotton, upland.....	25.0 bales.....	6,206
Do.....	15-21	Wheat.....	245.9 metric tons.....	26,882
Do.....	15-22	Rice, milled.....	63.7 metric tons.....	12,652
Do.....	15-23	Cotton, upland.....	7.2 bales.....	1,798

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authori- zation No.	Shipments reported		Estimated CCC in- vestment plus cost of financing
		Commodity	Quantity	
Pakistan.....	15-25	Cottonseed oil, refined.....	5.6 metric tons.....	\$2,177
Do.....	15-26	Soybean oil.....	0.3 metric tons.....	119
Do.....	15-27	Wheat.....	27.9 metric tons.....	2,546
Do.....	15-28	do.....	371.0 metric tons.....	29,083
Do.....	15-29	Rice, milled.....	66.5 metric tons.....	13,202
Do.....	15-30	Tallow, inedible.....	0.3 metric tons.....	76
Total.....				214,259
Paraguay.....	36-01	Wheat.....	19.2 metric tons.....	\$ 2,412
Do.....	36-02	Wheat flour.....	8.0 metric tons.....	\$ 1,112
Do.....	36-03	Cottonseed oil, refined.....	0.9 metric tons.....	\$ 359
Do.....	36-04	Lard.....	0.7 metric tons.....	\$ 219
Do.....	36-05	Milk, dried whole.....	0.4 metric tons.....	436
Total.....				4,538
Peru.....	13-01	Wheat.....	100.2 metric tons.....	\$ 11,940
Do.....	13-02	Cottonseed oil, refined.....	3.6 metric tons.....	\$ 1,044
Do.....	13-03	Butter.....	0.1 metric ton.....	\$ 96
Do.....	13-04	Wheat.....	38.2 metric tons.....	\$ 4,370
Do.....	13-05	do.....	30 metric tons.....	3,121
Do.....	13-06	do.....	20.1 metric tons.....	1,848
Total.....				22,419
Philippines.....	42-01	Rice, milled.....	17.1 metric tons.....	4,142
Do.....	42-02	Cotton, upland.....	18.7 bales.....	4,409
Do.....	42-03	Tallow.....	2.1 metric tons.....	464
Do.....	42-04	Milk, dry, nonfat.....	2.6 metric tons.....	1,213
Do.....	42-05	Beans, dry, edible.....	0.2 metric ton.....	321
Do.....	42-06	Cheese.....	0.1 metric ton.....	198
Do.....	42-08	Beef, frozen.....	0.004 metric ton.....	4
Total.....				10,751
Poland.....	41-01	Cotton, upland.....	97.7 bales.....	19,792
Do.....	41-02	Soybean oil.....	1 metric ton.....	310
Do.....	41-03	Tallow.....	17 metric tons.....	3,343
Do.....	41-04	Cotton, upland.....	114 bales.....	25,873
Do.....	41-05	Wheat.....	407.2 metric tons.....	39,190
Do.....	41-06	Barley.....	22.1 metric tons.....	853
Total.....				89,361
Portugal.....	35-01	Wheat.....	20.1 metric tons.....	\$ 2,566
Do.....	35-02	do.....	85.4 metric tons.....	\$ 10,928
Total.....				13,494
Spain.....	17-01	Corn.....	52 metric tons.....	\$ 3,916
Do.....	17-02	Cotton, upland.....	39.5 bales.....	\$ 8,252
Do.....	17-03	Cottonseed oil, refined.....	12.2 metric tons.....	\$ 5,492
Do.....	17-04	Tobacco.....	1 metric ton.....	\$ 1,204
Do.....	17-05	do.....	0.7 metric ton.....	\$ 1,018
Do.....	17-06	Soybean oil.....	25.6 metric tons.....	\$ 9,401
Do.....	17-06	Cottonseed oil, refined.....	2.8 metric tons.....	\$ 1,205
Do.....	17-07	do.....	18.2 metric tons.....	\$ 8,006
Do.....	17-07	Soybean oil.....	19.5 metric tons.....	\$ 7,203
Do.....	17-09	Potatoes.....	23.1 metric tons.....	\$ 1,798
Do.....	17-10	Cottonseed oil, refined.....	8.4 metric tons.....	\$ 3,889
Do.....	17-10	Cottonseed oil, crude.....	3 metric tons.....	\$ 1,275
Do.....	17-10	Soybean oil.....	24.3 metric tons.....	\$ 10,392
Do.....	17-11	Linseed oil.....	0.3 metric ton.....	\$ 128
Do.....	17-12	Wheat.....	70.7 metric tons.....	\$ 9,324
Do.....	17-13	Tallow.....	10 metric tons.....	2,123
Do.....	17-14	Hams, canned.....	0.4 metric tons.....	\$ 622
Do.....	17-15	Tobacco.....	1.1 metric tons.....	\$ 2,020
Do.....	17-16	Corn.....	34.1 metric tons.....	\$ 3,259
Do.....	17-18	Soybean oil.....	27.7 metric tons.....	10,467
Do.....	17-19	Cotton, upland.....	148.8 bales.....	35,368
Do.....	17-20	Cotton linters.....	1.9 metric tons.....	\$ 256

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

[Data in thousands]

Country	Purchase authori- zation No.	Shipments reported		Estimated CCC in- vestment plus cost of financing
		Commodity	Quantity	
Spain	17-22	Beef	3.4 metric tons	\$ 2,241
Do	17-23	Soybean oil	20.1 metric tons	\$ 7,338
Do	17-24	Pork, fat backs	1.1 metric tons	404
Do	17-25	Beef, frozen	19.3 metric tons	12,101
Do	17-26	Soybean oil	57.8 metric tons	23,028
Do	17-27	Tobacco	1.1 metric tons	2,034
Do	17-28	Tallow	13.8 metric tons	2,993
Do	17-29	Linseed oil	1.5 metric tons	503
Do	17-30	Corn	25 metric tons	1,931
Do	17-35	Beef, frozen	1.7 metric tons	1,047
Do	17-36	Hams, canned	0.7 metric tons	\$ 1,039
Do	17-37	Barley	48.9 metric tons	3,990
Do	17-38	Soybean oil	20.7 metric tons	7,525
Do	17-39	do	0.7 metric tons	228
Do	17-40	Cotton, upland	4.9 bales	1,249
Do	17-41	Pork, fat backs	0.05 metric tons	27
Do	17-42	Soybean oil	3.8 metric tons	1,408
Do	17-46	Tobacco	1.2 metric tons	1,786
Total				197,490
Thailand	23-01	Tobacco	1.2 metric tons	\$ 2,000
Do	23-02	Milk, dry nonfat	0.06 metric tons	32
Do	23-03	Milk, anhydrous	0.03 metric tons	43
Do	23-04	Tobacco	1.1 metric tons	1,798
Do	23-05	do	0.2 metric tons	301
Total				4,174
Turkey	10-01	Wheat	68.6 metric tons	\$ 8,747
Do	10-02	Barley	73.9 metric tons	\$ 7,693
Do	10-03	Oats	49.9 metric tons	\$ 5,000
Do	10-04	Wheat	31.4 metric tons	\$ 4,049
Do	10-05	Barley	72.3 metric tons	\$ 6,716
Do	10-06	Cottonseed oil, refined	12.3 metric tons	\$ 5,687
Do	10-07	Wheat	51.3 metric tons	\$ 7,105
Do	10-08	do	62.0 metric tons	\$ 7,173
Do	10-09	Corn	4.5 metric tons	\$ 451
Do	10-10	Rice, milled	9.9 metric tons	\$ 2,789
Do	10-11	Cottonseed oil, refined	10.6 metric tons	4,018
Do	10-12	Tallow	5.5 metric tons	1,185
Do	10-13	Wheat	77.5 metric tons	7,788
Do	10-14	do	359.5 metric tons	42,020
Do	10-15	Corn	9.6 metric tons	1,246
Do	10-16	Tallow	14.7 metric tons	3,465
Do	10-17	Wheat	50.0 metric tons	5,560
Do	10-18	Barley	37.7 metric tons	3,283
Do	10-19	Corn	37.6 metric tons	3,822
Do	10-20	Wheat	216.3 metric tons	23,800
Do	10-21	Beef, frozen	6.6 metric tons	4,885
Do	10-22	Cottonseed oil, refined	10.5 metric tons	4,088
Do	10-23	Tallow, inedible	0.2 metric tons	61
Do	10-24	Wheat	95.6 metric tons	9,223
Do	10-25	Corn	19.5 metric tons	1,282
Do	10-28	Cottonseed oil, refined	16.5 metric tons	5,992
Do	10-28	Soybean oil	17.8 metric tons	6,458
Total				183,586
United Kingdom	19-01	Tobacco	9.7 metric tons	\$ 15,295
Do	19-02	do	7.8 metric tons	\$ 12,186
Do	19-03	do	3.6 metric tons	\$ 6,023
Do	19-04	Fruit, fresh	5.7 metric tons	873
Do	19-05	Fruit, canned	0.8 metric tons	248
Do	19-06	Fruit, fresh	1.7 metric tons	182
Do	19-07	Fruit, juices	0.15 metric tons	30
Do	19-08	Fruit, dried	9.7 metric tons	3,052
Do	19-09	Fruit, canned	6.1 metric tons	1,411
Do	19-11	Fruit, fresh	1.4 metric tons	540
Total				39,750

See footnotes at end of table, p. 110.

Sales of surplus commodities for foreign currencies—Continued

SHIPMENTS REPORTED—CUMULATIVE TO DATE—Continued

Data in thousands]

Country	Purchase authorization No.	Shipments reported		
		Commodity	Quantity	Estimated CCC investment plus cost of financing
Yugoslavia.....	11-01	Wheat.....	125.1 metric tons.....	\$16, 240
Do.....	11-02	do.....	299.8 metric tons.....	38, 073
Do.....	11-03	Cotton, upland.....	56.9 bales.....	10, 339
Do.....	11-04	Wheat.....	102.5 metric tons.....	13, 051
Do.....	11-05	do.....	300.2 metric tons.....	39, 542
Do.....	11-06	do.....	390.8 metric tons.....	50, 785
Do.....	11-07	Lard.....	37.8 metric tons.....	11, 183
Do.....	11-08	Cotton, upland.....	45.0 bales.....	10, 703
Do.....	11-09	Wheat.....	97.7 metric tons.....	11, 558
Do.....	11-10	do.....	799.7 metric tons.....	93, 826
Do.....	11-11	Cotton, upland.....	94.2 bales.....	20, 223
Do.....	11-12	Cottonseed oil, refined.....	0.1 metric ton.....	45
Do.....	11-12	Soybean oil.....	11.3 metric tons.....	3, 929
Do.....	11-13	Tallow.....	9.7 metric tons.....	1, 919
Do.....	11-14	Lard.....	25.7 metric tons.....	9, 354
Do.....	11-15	Soybean oil.....	1.6 metric tons.....	487
Do.....	11-16	Wheat.....	76.2 metric tons.....	7, 463
Do.....	11-17	Cotton, upland.....	10.3 bales.....	1, 834
Do.....	11-18	Cottonseed oil, refined.....	0.2 metric tons.....	71
Do.....	11-18	Soybean oil.....	5.9 metric tons.....	2, 209
Do.....	11-19	Wheat.....	64.3 metric tons.....	5, 905
Total.....				348, 739
Grand total.....				2, 823, 304

¹ Rept. No. 54 reflects individual authorizations issued from inception through Dec. 31, 1957. Details of all individual authorizations will be repeated periodically, thus enabling users to dispose of copies of the report from time to time.

² Amount for ocean freight on C & F or CIF shipments included as follows:

Thousands		Thousands	
Argentina.....	\$600	Israel.....	\$4, 560
Austria.....	656	Italy.....	3, 752
Brazil.....	8, 210	Japan.....	11, 413
Burma.....	791	Korea.....	3, 366
China.....	488	Netherlands.....	7
Colombia.....	2, 422	Pakistan.....	1, 677
Ecuador.....	542	Philippines.....	727
Egypt.....	2, 109	Poland.....	2, 760
Greece.....	4, 375	Portugal.....	801
Iceland.....	2	Spain.....	962
India.....	29, 109	Thailand.....	206
Indonesia.....	2, 306		
Iran.....	2, 541	Total.....	84, 382

³ F. o. b. or f. a. s. ocean transportation amounts.

⁴ Includes amounts under footnotes (2) and/or (3) and also amount for freight differential as follows:

Thousands		Thousands	
Argentina.....	\$169	Italy.....	\$289
Austria.....	291	Japan.....	2, 059
Brazil.....	2, 138	Korea.....	150
Chile.....	536	Pakistan.....	677
Ecuador.....	25	Paraguay.....	28
Egypt.....	360	Peru.....	439
Finland.....	127	Poland.....	950
Greece.....	405	Portugal.....	62
Iceland.....	19	Spain.....	131
India.....	6, 702	Turkey.....	524
Indonesia.....	727	Yugoslavia.....	837
Iran.....	71		
Israel.....	548	Total.....	18, 265

⁵ Austria, \$1,151; Bolivia, \$9,061; Brazil, \$165,774; Burma, \$131; China, Republic of, \$112; Colombia, \$7,158; Ecuador, \$63; Finland, \$564; France, \$74; Greece, \$11,529; India, \$23,769; Indonesia, \$9,552; Israel, \$710; Italy, \$3,873; Japan, \$214; Korea, \$8,894; Mexico, \$453; Pakistan, \$1,630; Paraguay, \$5; Peru, \$4,526; Poland, \$22,109; Spain, \$11,593; Turkey, \$2,584; United Kingdom, \$5,000.

⁶ Shipments and invoicing complete—amounts reflected are actual costs.

Sales of surplus commodities for foreign currencies—Continued

NEW AUTHORIZATIONS, AMENDMENTS, OR ADJUSTMENTS (MAR. 13 THROUGH APR. 16, 1958)

[Data in thousands]

Country	Author- ization No.	Commodity	Quantity	Com- modity amount	Ocean transporta- tion	Control office	Estimated CCC invest- ment plus cost of financing
Argentina	1 14-02	Cottonseed oil, refined.				New Orleans, La.	\$895
	1 21-04	Wheat.				Dallas, Tex.	31
	1 21-05	Corn.				Chicago, Ill.	-971
Brazil	1 21-12	do.				Kansas City, Mo.	-282
	2 21-16	do.	0.3 metric tons.	15		do.	35
	2 28-06	Wheat.	3.3 metric tons.	-104		Dallas, Tex.	-208
	1 28-08	do.				do.	-540
	1 12-03	Wheat.				do.	-2,131
Chile	1 12-12	do.				do.	-2,798
	1 12-14	Wheat and flour.				do.	-425
	1 25-07	Wheat flour.				do.	-575
Colombia	25-13	Corn.		1,346		Chicago, Ill.	2,596
	25-14	Grain sorghum.	20.6 metric tons.	670		Dallas, Tex.	934
	25-15	Barley.	11.8 metric tons.	640		Minneapolis, Minn.	1,140
	25-16	Oats.	11.5 metric tons.	140		Kansas City, Mo.	270
	25-17	Cottonseed and/or soybean oil.	2.7 metric tons.	2,628		New Orleans, La.	2,628
	25-18	Cotton, upland.	16.5 bales.	2,874		do.	3,368
	25-19	Tobacco.	0.2 metric tons.	514		Washington, D. C.	514
	25-20	Milk, dry nonfat.	0.3 metric tons.	81		Cincinnati, Ohio	142
	25-21	Milk, anhydrous.	0.1 metric tons.	134		do.	213
	1 29-05	Wheat.				Dallas, Tex.	142
	1 30-01	do.				do.	-457
	1 18-04	Fruit, dried.				Chicago, Ill.	-1,273
Ecuador	1 18-08	Corn.				Cincinnati, Ohio	-95
	1 18-10	Wheat.				Chicago, Ill.	-14
	1 18-11	do.				Dallas, Tex.	30
Egypt	1 18-13	do.				do.	238
	18-16	Wheat and flour.	50.0 metric tons.	3,100	500	do.	5,605
	18-17	Tobacco.	2.3 metric tons.	3,060	52	Washington, D. C.	3,112
	18-18	Cotton, upland.	5.4 bales.	960	25	New Orleans, La.	1,110
	1 26-01	Wheat.				Dallas, Tex.	1,097
Greece	1 26-22	do.				Kansas City, Mo.	-292
	1 26-23	do.				do.	12
	26-28	Cheese.	0.1 metric ton.	36		Cincinnati, Ohio	62

See footnotes at end of table.

Sales of surplus commodities for foreign currencies—Continued

Country	Authori- zation No.	Commodity	Quantity	Com- modity amount	Ocean transporta- tion	Control office	Estimated CCC invest- ment plus cost of financing
Iceland	2 40-01	Wheat flour			-14	Kansas City, Mo	-\$14
	2 40-07	Corn			-62	do	-62
	2 40-08	Barley			-4	do	-4
India	2 40-09	Tobacco		82	-3	Washington, D. C.	80
	1 39-02	Rice, milled				Dallas, Tex.	-9,961
	1 39-04	Wheat				Kansas City, Mo	-6,334
	2 39-08	Tobacco		-52		Washington, D. C.	-52
	2 39-10	do		51		do	51
Indonesia	2 39-11	Milk, dry nonfat	Minus 0.4 metric tons	-115		Cincinnati, Ohio	-201
	39-13	do	5.4 metric tons	1,442		do	2,499
	1 34-01	Rice, milled				Dallas, Tex.	-6,646
	1 34-02	Wheat flour				Kansas City, Mo	1,339
	1 34-05	Rice, milled				Dallas, Tex.	-5,293
	1 34-10	Wheat flour				Kansas City, Mo	1,028
	1 34-14	Rice, milled				Dallas, Tex.	-345
	1 34-15	Wheat flour				Kansas City, Mo	16
	1 32-06	Wheat				Dallas, Tex.	336
	1 32-06	do				do	-389
Iran	1 16-20	Wheat and flour				Kansas City, Mo	-845
	1 16-24	Corn				do	-1,446
Israel	1 16-24	do				do	127
	1 16-25	Cottonseed oil	Minus 2.6 metric tons			New Orleans, La	12
	2 20-06	Soybean oil				do	-7,545
Italy	2 20-14	Cottonseed and/or soybean oil	Minus 17.2 metric tons	-7,545		do	-4,600
	2 20-15	do	Minus 10.9 metric tons	-4,600		do	8,484
	2 20-19	Soybean oil	24 metric tons	8,484		do	581
	20-20	Poultry	0.6 metric tons	581		Cincinnati, Ohio	24,840
	20-21	Cotton, upland	121.8 bales	21,187		New Orleans, La	3,071
	20-22	Tobacco	1.8 metric tons	3,000	71	Washington, D. C.	-155
	1 22-06	Barley				Portland, Ore	61
	1 22-13	Corn				do	509
	1 22-14	Wheat				do	-9
	1 24-01	Cotton, upland				New Orleans, La	-152
Japan	1 24-02	Tobacco				Washington, D. C.	-141
	1 24-03	Wheat				Portland, Ore	-3,249
	1 24-04	Barley				do	203
Korea	24-14	Rice, milled				do	-653
	24-15	Barley				do	-254
	24-17	Wheat and flour				Kansas City, Mo	

[illegible]

1 Adjustment.

2 Amendment.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Van Pelt.

Mr. VAN PELT. I have no questions.

The CHAIRMAN. Mr. Ray.

Mr. RAY. Mr. Chairman, I do not know whether I should ask the witness or counsel this question. Are we going to have someone before us who can explain why the Department of Agriculture was a party to the case decided by the Supreme Court?

The CHAIRMAN. You might ask the witness and, if he would rather have somebody else answer that question, he may so state.

Mr. HUDTLOFF. I would prefer that our legal people answer that question.

Mr. RAY. Will they be here?

The CHAIRMAN. Yes, sir; if you desire.

Mr. RAY. I would like to have that answer.

The CHAIRMAN. I brought this witness here to ask him the specific question as to whether or not in your operation this dual-rate system had interfered at all with your movement of goods foreign.

Mr. HUDTLOFF. It has not, Mr. Chairman.

The CHAIRMAN. It has not?

Mr. HUDTLOFF. That is correct.

The CHAIRMAN. I wanted to ask him whether or not your Division has any objection to it.

Mr. HUDTLOFF. Well, for the benefit of those who are not familiar with the way we are organized in the Department of Agriculture, there is another group that has the responsibility to represent the Secretary before regulatory bodies in an effort to get the best rates that they can for producers and farmers and others who participate in the agricultural program. They are completely outside of my own Division.

The CHAIRMAN. The next question was whether or not you had to sign any agreement to get the best rates.

Mr. HUDTLOFF. We did not.

The CHAIRMAN. You said "No."

You answered the next question as to whether or not the conference availability was more dependable than independent availability.

Mr. HUDTLOFF. We said that it was.

The CHAIRMAN. You said the conference was.

Mr. HUDTLOFF. That is correct.

The CHAIRMAN. Is that correct?

Mr. HUDTLOFF. That is correct, Mr. Bonner.

The CHAIRMAN. Those were the questions that I wanted to get from this witness because of testimony that had been offered previously.

Mr. RAY. It seems to me that there is at least an implication of an inconsistency in the views just expressed and the position taken by the Department in the litigation. I would like to understand it.

The CHAIRMAN. It will stand on its own bottom when we get to the place where we will decide what we are going to do here, but I was trying for the benefit of the committee to bring before the committee those who represented the fields that had something to do with this.

Mr. RAY. I understand.

The CHAIRMAN. As to the other questions, of course, it is perfectly all right to ask this witness. You and I and all of us on the committee can appreciate his position.

Mr. RAY. It is quite clear that we ought not ask him the questions I have in mind, but I would like to have those questions answered.

The CHAIRMAN. I will see that you get an answer.

Mr. Mailliard?

Mr. MAILLIARD. Mr. Chairman, on the assumption, then, that we will have someone from the Department who can explain why they participated in the suit and if they are opposed to this bill and if so why, I do not think there is any need to bother this witness.

Mr. PELLY. I would like to ask the witness if, in his opinion, the dual system has resulted in increased cost to the farmers themselves, members of farm organizations.

Mr. HUDTLOFF. Let me answer that in this way, Mr. Congressman: That in all of the negotiations that we do, whether they are with conferences, whether they are with private bulk operators, we try to get the best rates that we can, which, I think, is the best in the final analysis whether it is for the producer or whether it is for the taxpayer.

Mr. PELLY. And there is a competitive situation, I judge from what you say, and you are trying to save the Government all the money you can and trying to save the farm organization and people that you represent all the money you can?

Mr. HUDTLOFF. That is correct.

Mr. PELLY. But in the net analysis, then, based on your experience, do you think that the dual system has worked in such a way as to raise the cost in your operation?

Mr. HUDTLOFF. From my operations, I cannot say that it has.

Mr. PELLY. That is all, Mr. Chairman.

The CHAIRMAN. Have you any questions?

Mr. GLENN. I have no questions.

The CHAIRMAN. I appreciate very much your coming.

Mr. HUDTLOFF. Thank you, Mr. Bonner.

The CHAIRMAN. The next witness will be Mr. Cocke, Gulf Associated Freight Conferences.

STATEMENT OF ALEX C. COCKE, VICE PRESIDENT, LYKES BROS. CO., INC., ACCOMPANIED BY H. A. CARLYS, CHAIRMAN, GULF ASSOCIATED FREIGHT CONFERENCES; AND HAROLD W. ROBERTS, VICE PRESIDENT, TEXAS TRANSPORT & TERMINAL CO., NEW ORLEANS, LA.

Mr. COCKE. Mr. Chairman and members of the committee, I am appearing at this hearing as spokesman of a committee of 3 of the 5 gulf conferences.

The CHAIRMAN. Will you identify yourself?

Mr. COCKE. My name is Alex C. Cocke. I am vice president of Lykes Bros. Steamship Co., Inc., New Orleans.

I am appearing at this hearing as spokesman of a committee of 3 of the 5 gulf conferences within the Gulf Associated Freight Conferences group. The committee of these conferences is composed of Mr. Lloyd Estes, vice president, States Marine/Isthmian Agency, Inc.; Mr. Harold W. Roberts, vice president, Texas Transport & Terminal Co.; agents for a number of foreign lines, and myself, vice president of Lykes Bros. Steamship Co., Inc.

I am accompanied at these hearings by Mr. Carlys, who is the chairman of these conferences, and Mr. Roberts. Mr. Estes is not here.

The three gulf conferences represented by the committee are the Gulf-French Atlantic Hamburg Range Freight Conference, the Gulf-Mediterranean Ports Conference, and the Gulf-United Kingdom Conference. The memberships of the Gulf-French Atlantic Hamburg Range Freight Conference, the Gulf-Mediterranean Ports Conference, and the Gulf-United Kingdom Conference—which employ the conference contract system—are composed of the following active lines: Gulf-French Atlantic Hamburg Range Freight Conference, 4 American lines and 8 foreign lines; Gulf-Mediterranean Ports Conference, 5 American lines and 9 foreign lines; Gulf-United Kingdom Conference, 4 American lines and 3 foreign lines. All of the member lines of these conferences have unanimously approved of the statement I am about to read. The names of the member lines are contained in a list—attached to this statement—which I will present to you.

Our committee is here today to testify in favor of the bills S. 3916, H. R. 12751 proposed in the Senate and House of Representatives to amend section 14 of the Shipping Act, 1916, by inserting at the end thereof the following:

Provided, That nothing in this section or elsewhere in this Act shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the provisions of section 15 of this Act. The term "dual rate contract arrangement" as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree.

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

The May 19, 1958, decision of the Supreme Court of the United States, disapproving the contract-noncontract rate proposal of the Japan-Atlantic and Gulf Conference, has proved disturbing, to say the least. This decision, in our opinion and the opinion of our conference attorney, passed only on the proposed system of the Japan-Atlantic and Gulf Conference and its purpose and effect, holding that the purpose of the Japan-Atlantic contract tie was to stifle outside competition; that ties with shippers which did not have this effect were not made unlawful; that whether a particular contract tie would have this effect is, in the first instance, a question for the Maritime Board to decide; and that precise findings by the Maritime Board of a particular system's intent and effect is essential to a judicial determination of the system's validity under the Shipping Act. The Maritime Board has made no such findings respecting the contract-noncontract rate system of our conferences. The purpose and effect of the merchants' contracts and dual rates of our conferences is to stabilize rates, and it is in no sense a predatory device as it does not prevent, or stifle, nonconference competition.

At recent meetings of the three conferences, which I am representing, the following resolution was unanimously adopted:

Whereas the purpose and effect of the merchant's contract and dual rates of this conference is to stabilize rates and not to prevent, stifle, or curtail competition, and whereas in no sense do they constitute a predatory device:

That the conference continue, as in the past, its use of the merchant's contract form and contract-noncontract rates.

As of this time, our three gulf conferences have a total of 6,054 contracts with merchants who are satisfied with the stability and equality of rates afforded by the contract system. The shipper exporting 100 tons gets the same rate and treatment as does the shipper exporting 1,000 tons.

Probably the major commodity moving from United States gulf ports to European ports is cotton. Since 1949, the American Cotton Shippers Association has approved of the stabilization of ocean-freight rates for the good of the industry as afforded by the conference contract system. The cotton shippers themselves (the American Cotton Shippers Association) asked that the contract system (dual rates) be established on cotton. During all this time, every year the American Cotton Shippers Association has officially endorsed the conference contract system and urged its continuance.

At the annual (34th) convention of the American Cotton Shippers Association held at Memphis on April 25-26, 1958, the following report was unanimously adopted:

During the past year there has been a very confused condition in the ocean-freight market. Charter rates have been very low, and this has resulted in the necessity of your committee asking the steamship lines to reduce the existing ocean-freight rates, and we are pleased to say that material reductions have been secured.

On several occasions our association has endorsed the conference contract rate system, and we recommend that we reiterate our belief that the system is of great value to the cotton industry as a whole. It is our responsibility to see that United States cotton can be exported at an ocean-freight rate that is reasonable in comparison to rates paid by the competitive growths and to rates paid by other commodities. At the same time, the agreed rates must be equitable to the ocean carrier.

For the information and records of your committee, we have attached to this statement certified copies of the reports submitted by the ocean freight committee of the American Cotton Shippers Association for the years 1955, 1956, 1957, and 1958. These reports were all unanimously adopted by the American Cotton Shippers Association.

Similar reports were adopted for the years 1950 through 1954, but we decided not to burden you with all of same but to give you 4 which will give you an excellent idea of how the cotton exporters view the dual rate system.

Although we feel that the contracts of our conferences are not affected, by the reasons outlined above, we strongly urge that legislation be enacted as promptly as possible in view of the effect the decision of the United States Supreme Court in the Japan-Atlantic case, has had. For example, almost immediately following the decision, a nonconference foreign line, flying the Japanese flag in the Italian trade from the gulf, announced a rate of \$1.28 per 100 pounds on cotton as against the conference rate of \$1.60 per 100 pounds, which rate was agreed upon at the meeting of the American Cotton Shippers Association held at Memphis, Tenn., on April 25-26, 1958.

For your information, in addition to cotton (which we consider the principal export commodity out of the gulf) the following commodi-

ties, moving through the gulf, are also under the conference contract system :

Agricultural implements and machinery	Hides, animal
Alcohols	Iron and steel items (including tin-plate)
Asphalt and asphaltum (Gilsonite)	Juices, citrus
Barrels, knocked down and set up	Lead and zinc
Boards (card, container, kraft liner, paper, wall)	Lumber, logs and kindred commodities
Bran, rice	Machinery (all kinds)
Brick, clay and plastic fire	Meals (alfalfa, cottonseed, etc.)
Canned grapefruit	Milk (powdered, skim)
Cheese	Mohair
Chemicals	Petroleum products (lube oil, wax, grease, etc.)
Clays (bentonite, common, filtrol, fire, Tripoli)	Naval stores (rosin, turpentine, etc.)
Concentrates, molybdenite	Scraps (aluminum, brass, copper, etc.)
Feeds, animal and poultry	Tobacco
Flour	Starch
Glucose	Synthetic resin
Grapefruit and oranges (citrus fruits)	Synthetic rubber
	Woodpulp

In addition to cotton, when commodities are represented by trade bodies (associations or groups of shippers), our conferences have been and are willing at all times to meet with such groups to consider and discuss the measure of rates, contract conditions, et cetera, and a number of these trade associations or groups have, from time to time, met with the conferences or our committees. You will see, therefore, that, generally speaking, the matter of contract rates, conditions, et cetera, is one of mutual agreement between the conferences and the exporters.

We feel that unless something is done promptly, chaos and confusion will result and without stability of rates, the foreign trade will suffer as a consequence thereof.

Despite the fact that our conference contracts have been in effect for the past 10 years—nonconference competition has prevailed. There has been a nonconference line operating from the gulf to continental Europe which originally had sailings about once a month—later, sailings about every 20 days, then—twice a month, and now, approximately 3 sailings per month. The nonconference competition in the Mediterranean trade has increased from one line (originally) to 2 lines and now, there are 4 nonconference lines operating from the gulf to the Mediterranean area, so—it is obvious that our conference contract system did not stifle or curtail nonconference competition. This certainly indicates in these gulf trades that competition has been far from stifled.

The condemnation of the dual rate system by the Supreme Court decision, on the grounds that it can be used as a tool to stifle competition is, in our opinion, not correct or fair. Membership in the conferences, and consequently participation in the dual rate contracts, is immediately available to any steamship line who cares to apply for same. It is compulsory, under the Shipping Act, that any bona fide steamship line must be accepted to membership in the conference promptly on application, therefore, the conferences have no resemblance to cartels or monopolistic groups.

Mr. Chairman, I was not at the hearing on yesterday but my attention was called to a part of the transcript of Mr. O'Connor's testimony, which I will read :

Well, I can say that on one occasion Lykes, one of the biggest operators, a subsidized operator which I suppose belongs to 30 conferences—

incidentally, we do not belong to quite that many—

filed five proceedings before the Maritime Board in recent years opposing the use of the dual rate system in certain trades in which they were competing.

I wish to emphatically state that Mr. O'Connor is not correct in that statement.

We have fostered the contract system. We think it is fair and equitable and any proceedings were due to certain conditions in the conference which we were trying to correct but we in no manner, shape, or form have opposed the contract system.

I also note in Mr. O'Connor's testimony that he refers to Isbrandtsen as the independent American line.

I want to state that as far as the gulf is concerned, that is also not correct. Isbrandtsen operates out of the gulf in the name of Amerind Shipping Corp., a service to continental Europe, the Vinke Line, a Dutch nonconference line.

He also represents the Fabre Line, which is a French line operating to various ports of the Mediterranean, and, as a matter of fact, the Fabre Line was suspended from the Gulf-Mediterranean Ports Conference and subsequently resigned. They were suspended due to alleged malpractices.

Isbrandtsen is also agent or operates the Crescent Line out of the gulf which operates foreign-flag vessels to Beirut, Alexandria, and the Persian Gulf, so that as far as the gulf is concerned, Isbrandtsen is not an independent American line.

I also wish to call your attention to the fact that the so called American-flag liner companies in foreign trade consist of 25 lines, of which 22 lines are members of conferences and 1, Isbrandtsen, is not.

The CHAIRMAN. Let me ask you something about the Isbrandtsen operation at the present time. Are they a common carrier or could they be classified as an industrial carrier?

Mr. COOKE. A common carrier as far as the gulf is concerned.

The CHAIRMAN. Do they continue to practice the system of buying cargo, hauling it and selling it?

Mr. COOKE. I understand in the Far East trade they do.

The CHAIRMAN. I know that was an old custom when the former Mr. Isbrandtsen operated this company.

Mr. COCKE. They have done it in recent years. I do know that.

The CHAIRMAN. That is the reason I asked whether they were industrial carriers or a common carrier as a whole.

Mr. COCKE. Out of the gulf they are common carriers.

The CHAIRMAN. Where do they practice this?

Mr. COCKE. They have in the other trades in the North Atlantic trade practiced, as I understand, purchasing commodities, such as sugar and coffee, and putting them on their own ships.

The CHAIRMAN. And selling them at other ports?

Mr. COCKE. Selling them at other ports.

I listened to Mr. Hudtloff's testimony with a great deal of interest.

The conferences in the gulf do not regulate rates on agriculture's biggest product, namely, bulk grain. The bulk grain rates are open in our conferences and it is a free trading proposition. The confer-

ences accord to the Agriculture Department the right to contract rates without their having to be signed nor to be bound by contract conditions. That is a concession that we have made to the Department of Agriculture, having in mind that a great part of the commodities they ship are so-called relief goods.

I think, generally, Mr. Chairman, that that concludes my statement.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman.

Just for the record, do the two gentlemen that accompany you each agree to the remarks you have made?

Mr. ROBERTS. Yes, sir.

Mr. CARLYS. Yes, Mr. Allen.

Mr. ALLEN. I want to get it on the record to prove they were here.

Mr. Cocke, could you give us an estimate of the percentage of the agricultural products that are shipped in the export trade that are handled by the Department of Agriculture and the other percentage that is not so handled by the Department?

Mr. COCKE. Well, the Department of Agriculture ships a large amount of grain in full cargoes and it would be very difficult for me to hazard a guess although they do ship approximately 50 percent of the bulk commodities on liner vessels. As far as their general run of cargo is concerned, I would say that, due to the regularity of service, the conference lines receive the larger portion of it.

Mr. ALLEN. I think it would be better to hazard your guess than to hazard mine. Could you tell just very generally in your opinion how many individual growers or farmers, percentagewise, would be represented in shipments that are handled by the Department and what percentage of the total number of individuals would be handled by other than the Department?

Mr. COCKE. Well, taking cotton, for example, which is in commercial trade now, I would say that almost 100 percent of the farmers used shipment under the contract system.

As far as the Department of Agriculture is concerned with the large number of grain shippers, it would be very difficult, I think, Mr. Allen, to answer that question.

Mr. ALLEN. Could you give us some indication of the conditions under which, from the viewpoint of the carriers, a dual rate system is desirable and when under other conditions it is neither necessary nor desirable?

Mr. COCKE. I think, Mr. Allen, that if you did not have the dual rate system that you would have a very chaotic situation. You would have low rates at one time. You would have very high rates at other times.

I would hazard this statement or make this definite statement. If you had not had the dual rate system during the Korean situation and the Suez situation, rates instead of going up, say, 10 or 15 percent, would have gone up 100 percent. Where the commodities were not controlled by the dual rate system, such as bulk cargoes, you had over 100 percent increases.

The conferences, of which we are members, have always felt an obligation to the shippers in good or bad times to keep the vessels on the berth and to give them fair and reasonable rates.

As far as cotton is concerned, we sit down with these shippers and we discuss the world situation as far as the competition that they are faced with from foreign countries growing cotton. We consider the rates from those countries to the countries where the cotton is used and try to come up with a rate that will be commensurate with the rates from foreign countries. We do that on other commodities, too.

Mr. ALLEN. Yesterday, there was quite a bit of discussion as to whether the conferences in which the rates were fixed by the action of American and foreign lines fixed rates which were compensatory for the American lines with the result that those rates would be very lucrative, much more lucrative for the foreign lines because of cheaper costs of operation.

Could you comment on that?

Mr. COCKE. Yes, I would like to comment on that. In a number of our trades there are more foreign lines in there than the American lines but we in the gulf try to view the situation, both foreign lines and American lines, for the good of American trade. If these lines are in the gulf trade, some to their own countries, some to other countries, and they have served the trade for a long number of years, I have found the disposition of the foreign lines to view the situation where a fair rate is put in in order to move the cargo. For example, one line, the Harrison Line, has been sailing out of the gulf for 75 years. The present rates, from our standpoint, are not too remunerative nor are they for the foreign lines because their costs have gone up. They have to pay pretty stiff stevedoring charges in the gulf and while their cost of operation is lower than ours, generally speaking they are not getting wealthy on the present rates.

Mr. ALLEN. To sum it up, would you say that the fixing of rates that are compensatory for American lines acts as a sort of umbrella for the foreign lines or does not so act?

Mr. COCKE. I would not say it acted as an umbrella. Of course, they may make a little more money than we do, but generally speaking they view the rates from our viewpoint. They realize that if they got excessive rates they would not be in business too long.

I do not think we are holding an umbrella over the foreign lines. Of course, there are some exceptions. Some American lines want very much higher rates but generally speaking, I think the foreign lines that are members of the conferences generally have taken a fair view of it and they sit with us in these committee meetings.

I might add that I have had the honor of being chairman of the cotton rate committees of some of the conferences, including the Far East Conference, since 1950. We have not had any cases where the foreign lines have voted for higher rates than we finally agreed to. They have played along with us. I do not think that any American line, as far as we are concerned, would stay in the conference unless the treatment was equitable.

Mr. ALLEN. In your opinion, does the operating differential subsidy paid to the subsidized American lines put them in a position where they can compete on a fairly even basis with their foreign competitors?

Mr. COCKE. I would say, generally speaking; yes, sir.

Mr. ALLEN. Could you tell me what percentage of the berth cargo moving in and out of the gulf is carried by the American-flag lines?

Mr. COCKE. Bulk cargo?

Mr. ALLEN. No, the berth cargo.

Mr. COCKE. I would say approximately 40 percent. We have at times carried better than 50 percent, but right now I would say 40 percent would be a good figure.

Mr. ALLEN. Would you have any opinion as to whether the fixing of conference rates affects the rates offered by nonconference lines?

Mr. COCKE. Well, generally speaking, Mr. Allen, very few of the nonconference lines initiate rate reductions. For example, we reduced the cotton rate from \$1.85 to \$1.60. When we had the \$1.85 the nonconference competition was quoting \$1.60. They did not say, "Our \$1.60 rate is too high." They waited until we reduced to \$1.60 on our rate and then most of them went to \$1.45.

Mr. ALLEN. It would look as though the umbrella was over the nonconference lines.

Mr. COCKE. It definitely is. There is no question about it in my opinion.

Another situation which I would like to bring to your attention on this talk of stifling competition is that the shippers of cotton themselves came to the conference and asked for a contract system due to the fact that it looked like the conference was going to pieces. There were rumors that some of the lines were going to withdraw because not only were we faced with this particular nonconference competition but some of the big shippers were thinking about getting together and chartering a ship to ship 15,000 and 20,000 bales of cotton. That particular shipper would get a very low rate on charter whereas the little fellow would have been priced out of the market. He would have gone out of business.

Some of the big shippers themselves volunteered that they would go along with the contract system to stabilize that part of the cotton business; namely, freight rates.

Mr. ALLEN. Thank you.

The CHAIRMAN. Were you here yesterday?

Mr. COCKE. No, sir; I was not.

The CHAIRMAN. There was a discussion here with respect to the operating subsidy and the recapture clause by the Maritime Administration. My recollection is that it was stated that the operating subsidy was just cream. If I am wrong about that, I want to be corrected.

The thought occurred to me that, if it was true as the statement was made, the operators were carrying two sets of books or the Maritime Administration was negligent in their checking of the operators with respect to the recovery.

Mr. COCKE. Well, I do not agree with whoever made the statement.

The CHAIRMAN. He said the rates were 50 percent too high, I think.

Mr. ALLEN, is that about what was said?

Mr. ALLEN. I think it was stated that the operating differential subsidy was in addition to the conference rate.

The CHAIRMAN. Is that right?

Mr. COCKE. I think that statement is absolutely incorrect. CASL will have a witness, Mr. Allen.

The CHAIRMAN. If that statement was true as I heard it, then we have to do something about investigating the efficiency of these two

gentlemen sitting up here, as to what they are going to get this recapture money back for which we provide when we pay operating subsidy.

Mr. COCKE. That statement is absolutely incorrect, in my opinion. CASL will have a witness. I think he will be able to tell about that.

The CHAIRMAN. It is a very pertinent thing. It might not be altogether in keeping with what we are doing here, but it worried me when the statement was made by a responsible witness.

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The witness is here.

Mr. O'CONNOR. Mr. Chairman, I might say that I never made any such statement. I gave the instance where in some cases the amount paid out in dividends by some of the subsidized companies in some years just about equaled the amount they got in subsidies, and I would like now an opportunity in writing at least, to answer some of the statements made by Mr. Cocke, especially in contradiction to my statement, because I can give the docket numbers before the Federal Maritime Board in the actions which Lykes brought attacking the dual-rate system; for instance, Isbrandtsen is not a steamship operator out of the gulf. Several of those statements are so beside the fact. We have been listening to them for years. Every argument made here has, of course, been made here for years before the Board and before the courts.

They want to rehash the whole thing here after the highest courts have spoken.

Mr. COCKE. I am not going to attempt to answer you, Mr. O'Connor.

The CHAIRMAN. We are not going to have any tit for tat between the witnesses. I will tell you that.

We will let the witnesses testify and their testimony will stand. This thing could go on forever if we have this talking back and forth.

Have you finished your general statement?

Mr. COCKE. Yes, I have.

The CHAIRMAN. Mr. Allen, will you proceed? Do you have any questions?

Mr. ALLEN. I think I have one further question.

Is there any relationship between the amount of the operating subsidy and the amount of the surplus profit or dividends paid?

Mr. COCKE. I would prefer for the CASL representative to answer that question, Mr. Allen.

The CHAIRMAN. Mr. Van Pelt.

Mr. VAN PELT. Mr. Cocke, with reference to some of the agricultural commodities which were listed, such as cheese, and milk, powdered and skim, and so forth, do we have other exporters and shippers, private witnesses other than the Department of Agriculture?

Mr. COCKE. Yes.

Mr. VAN PELT. Have they been in opposition or in favor of this?

Mr. COCKE. They have been in favor of the dual-rate system.

Mr. VAN PELT. That is all.

The CHAIRMAN. Mr. Ray.

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. Mr. Cocke, do all of the five gulf conferences use the dual-rate system?

Mr. COCKE. No, three do.

Mr. MAILLIARD. Mr. Allen asked you a question which I do not think you quite answered. I would be very curious to have the answer as to why does a conference use the dual-rate system in some instances and not use it in other instances?

Mr. COCKE. I will cite one specific instance to you, the Gulf-United Kingdom Conference. The principal commodity moving from the gulf to England is cotton. We were prepared at the time that we put in the contract system to do the same thing to the United Kingdom. However, the cotton was all controlled by the British cotton control and the British cotton control agreed, of their own volition, to use nothing but conference lines on account of dependability, regularity, and stability of rates. For that reason the contract system was not put in on cotton to the United Kingdom. It was put on another commodity but the cotton was all being shipped and subsequently when the business went back into private hands, all this litigation was going on and the United Kingdom conference decided they did not want to spend money and possibly get into litigation, so they deferred the inauguration of the contract system.

The other conference is the Scandinavian-Baltic Conference, where the trade is very, very small and the Norwegians, the Danes, and the Swedes control all the business, so that there is no need as far as that conference to put in the system. It never has been faced with any situation that we are faced with in other conferences, due to the smallness of the trade, so to speak.

Mr. MAILLIARD. In other words, where the trade is principally controlled by foreign governments you are really in almost the same position as if you did have a contract system.

Mr. COCKE. That is right.

Mr. MAILLIARD. You have to have agreements with those governments.

Mr. COCKE. That is correct.

Mr. MAILLIARD. So in those two instances it would appear to me that you had the dual rate system in all but actually a normal contract.

Mr. COCKE. That is correct.

Mr. MAILLIARD. Can you conceive of any other instance where you are not up against the proposition of having to deal with a government agency for the bulk of the trade where it would not be desirable to have the dual-rate system?

Mr. COCKE. I think that where we have it, it has proven that it was necessary for stability, and that is the reason for it.

Mr. MAILLIARD. The thing that I am getting at, because this goes right to the heart of the Supreme Court decision, is, if you looked over all the conferences and selected those which have a dual-rate system, would you not find that those are the conferences where there is competition outside the conference and where there is no dual-rate system there is no competition outside the conference?

Mr. COCKE. Not necessarily, no.

I mean, for example, when the contract system was put in some 11 years ago to the Mediterranean there was no outside competition at that time, but there were large lots of cotton and, as I say, there is a possibility of large shippers using full-cargo vessels. So we considered it at that time in the interest of the shippers generally speak-

ing to put in the contract system and try to ward off such competition as that.

Mr. MAILLIARD. So there it was not a question of trying to anticipate competition from another liner operation, but, rather, from having the casual tramp come in and skim the cream off the trade.

Mr. COCKE. That is correct.

Mr. MAILLIARD. After you instituted this system you got other non-conference liner competition?

Mr. COCKE. That is right.

Mr. MAILLIARD. That would seem to indicate that that reasoning would at least not apply to that conference.

Mr. COCKE. We certainly don't think it does, Mr. Mailliard.

Mr. MAILLIARD. Thank you.

Mr. ALLEN. Would you yield?

Mr. MAILLIARD. Yes.

Mr. ALLEN. The bill before us provides that nothing in this section 14 shall be applied to for bid, or make unlawful any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment.

You said, I think, that there was no dual-rate system on the cotton moving to the United Kingdom, but you had considered that.

Mr. COCKE. That is right.

Mr. ALLEN. Would you be of the opinion that the language of this bill would exclude the possibility of a dual-rate system?

Mr. COCKE. During that period, yes.

Mr. ALLEN. Until some further law?

Mr. COCKE. Until some further law is passed, yes.

Mr. ALLEN. Unless possibly you got busy and made one up before we enacted the law?

Mr. COCKE. That is correct.

Mr. ALLEN. Thank you, Mr. Chairman.

Mr. MAILLIARD. Would that necessarily be true? Your contention in your statement is that the Supreme Court decision went to a specific situation and would not necessarily apply to others; so the enactment of this legislation would not put you in any different position. You would be taking a chance on litigation.

Mr. COCKE. We would be taking a chance on litigation, and it is the confirmed opinion of the members of the conference that pending the stopgap legislation during that period we will not attempt to put in a contract system on cotton to the United Kingdom.

Mr. MAILLIARD. However, that is a decision you have made on your appraisal of the whole situation. It would not necessarily be illegal if you did put one in?

Mr. COCKE. As I read that bill, it legalizes existing contracts, which we thought meant that you couldn't at this time put in another contract system.

Mr. MAILLIARD. You would have no protection from this bill, but if your interpretation of the court decision is correct, the court might even, if you got into litigation, decide differently in another set of circumstances.

Mr. COCKE. That is quite true.

The CHAIRMAN. Mr. Dorn.

Mr. DORN. I thought you scored an excellent point in favor of the bill in a conversation with Mr. Allen in answering one of his questions. You mentioned something about shipping rates during the Korean war. I wonder if you could explain a little bit more something about that, how it worked, because I confess I do not understand too much how you go about setting the rates.

You mentioned that the rate would have increased 100 percent if it had not been for the conference, and that the conference only increased it about 15 percent.

First, I wondered how come the conference increased it 15 percent and then why the rates would have gone up 100 percent.

The reason for this question is I would feel it very essential then to have the conference in time of emergencies, but I would appreciate it if you would elaborate on it.

Mr. COCKE. Yes, I will, Mr. Dorn.

We feel in getting the shippers to go along and give the conferences their business that we owe an obligation to them to give them stability of rates over a period.

On the same score, bulk grain or bulk commodities are not covered by the contract system because they are, to a great extent, shipped in full cargoes.

Well, when the Korean situation came on there was a great shortage of tonnage. The grain rate to continental Europe advanced approximately 100 percent. Some of these tramp lines that were trying to operate liner services went out of the liner business and took full cargoes of grain from one port in the gulf to one port in the continent at \$18, and they made a tremendous amount of money.

We met with the cotton people. Under our contract either party has a right to call a meeting and discuss matters. We pointed out to them that we needed extra tonnage. We were going to try to charter, but the charter rates were very, very high, almost prohibitive at that time, but we did need a little added revenue to help out the situation. We thought an increase of 10 or 15 percent would not affect the cotton trade, but it would help us to maintain our service and to try to get additional tonnage.

My company put on a number of extra ships that we chartered. We didn't make any money out of those ships. We just about broke even during the Korean crisis, but lost money on the vessels during and after the Suez situation. But the cotton people saw the situation. They thought it was fair and equitable, and they gave us an increase. We asked, I believe, for 25 percent, which, based on a charter market, was still very, very low, and I think we settled for 15 percent and gave them a rate throughout the cotton season, which runs from June to July, and took care of their requirements.

Mr. DORN. Were they still able to be as competitive as they had been in the world market?

Mr. COCKE. They were really more competitive because rates from foreign countries increased much more than our rates did. In other words, we kept ours on a very, very reasonable basis.

Mr. DORN. Then, diverging a moment from the original subject, and continuing on the cotton now, do the rates that you give as a conference to the cotton merchants enable them to be as competitive as possible in the world market?

Mr. COCKE. It does.

Mr. DORN. For instance, Egyptian cotton. Is that able to be shipped in general on a cost or distance ratio on the same basis as United States cotton.

Mr. COCKE. Let me answer it this way: I don't want to specify Egyptian cotton. When we have had a meeting I have cabled to all of our foreign offices, and some of the other conference members have, too, and we will list those rates. We show them to our friends, the cotton people, and if the rates are too much out of line with our rates, then we are asked for a reduction because we have agreed that, as far as possible, we will keep our rates on a level which will be competitive with foreign governments.

Sometimes there may be rate wars. Of course, we can't go to such a low level. But, generally speaking, we do try to keep our rates on a fair basis with rates of foreign countries. They are not always the same. They may be higher at times, but they are comparable, so that our cotton can compete as far as rates are concerned with foreign growths.

I don't mean to say that if there was a ridiculously low rate put in we would meet that rate. But we would discuss the matter and try to persuade our friends that it was not necessary to go that low.

Mr. DORN. I never heard any complaint from any American merchants with reference to our rates, either enabling them to meet competition. Do you receive such complaints, and, if so, what do you do about it?

Mr. COCKE. If we receive a complaint on a commodity which is competitive with a foreign country, we promptly go into all the facts and figures of it and try to be equitable and meet them as far as we can.

I will tell you of a situation that comes rather vividly to my mind at this time. There was a shipper of paper in Houston. He was competing with Swedish paper from Sweden to this particular country.

We reduced the contract rate about 40 percent to enable that man to meet the Swedish competition, and he did.

Mr. DORN. Of course, then it is advantageous to you to have your rates as low as equitably possible in order to get the merchandise. You wouldn't be getting the merchandise if it didn't meet competition.

Mr. COCKE. That is right. That was a case where in our particular conference there were Swedish, Norwegian and Danish lines, and the rate was reduced.

Mr. DORN. Keeping on this cotton—I do want to get back to the emergency situation—it was testified to in at least one case yesterday that rather excessive penalties were put on one of the shippers by one of the conferences, and this was a shipper of cotton. Do you think it is advisable in this bill for us to limit the penalties that a conference could impose on violators of this dual rate system?

Mr. COCKE. I think you should put in the bill a reasonable penalty.

Mr. DORN. What would you consider a reasonable penalty to be? Would it be approximately 50 percent of the amount of freight involved?

Mr. COCKE. I would say "yes."

Mr. DORN. Would you explain what 50 percent of the amount of freight involved means? The cost of the freight, the cost of transportation or what?

Mr. COCKE. If he violated the conference contract, and say he shipped 100 bales of cotton, freight today is about \$8 a bale. That is \$800, and his penalty would be \$400 on that basis.

Mr. DORN. Would you repeat that so I understand it.

Mr. COCKE. If he was a contract shipper and he violated the contract by shipping 100 bales of cotton on a vessel other than a conference vessel, the freight on the 100 bales of cotton today at the conference rate is \$800; \$8 a bale. 50 percent of \$800 would be \$400.

Mr. DORN. Therefore, you feel a penalty should be 50 percent of the shipping cost paid by the violator?

Mr. COCKE. I would say that would be equitable.

Mr. DORN. Notice how I worded that: 50 percent of the shipping cost paid by the violator, or 50 percent of the shipping cost that the violator should pay.

Which?

There may be a fairly large difference there.

Mr. COCKE. I think that the larger the shipment the more serious the violation would be.

Mr. DORN. Yes, but what I am getting at is is it 50 percent of the shipping cost paid by the violator using the nonconference line or 50 percent of the shipping cost that he should have paid if he had used the conference line?

Mr. COCKE. I would say 50 percent of the freight if he would have used the conference line.

Mr. DORN. Let's get back to this emergency situation.

When you say that the shippers only pay an additional 15 percent in the conference that you are affiliated with, do you mean to imply that in that time of emergency all that was paid by shippers on the other conference lines was no more than approximately 15 percent also?

Mr. DORN. How much did it differ?

Mr. COCKE. As far as the general rule of conferences, I don't think that there were any increases, with maybe rare exceptions, of more than 25 percent.

Mr. DORN. And how much was the increase outside the conferences?

Mr. COCKE. On grain, for example, it was 100 percent.

Mr. DORN. There are other materials besides grain. Was that constant or did it range from 1 percent up to 100 percent on all materials? Do you have any statistics or could you get any statistics?

I think it is a very important point that you are making here, that in times of emergency the conferences turn out to be a tremendously stabilizing influence for America exports, and I would like it pursued just as far as it could be with statistics.

Mr. COCKE. Of course, I didn't have access to a number of the outside rates as quoted, but we understood that in many instances some of the outside lines were getting better than conference rates at that time.

Mr. DORN. Is there any way that you could get the general statistics on this, probably by talking with other men, and then submitting it to us?

Mr. COCKE. I would say it would be very difficult to get, but I will try.

Mr. DORN. You mentioned that there is one place in which this bill could be amended with reference to penalties. I wonder if you would have any objection if the bill was also amended in general terms so that it would specifically say that all shippers must be specifically told that there are these two rates?

Mr. COCKE. No. As a matter of fact, the shippers are notified by the conferences and through the associations of the difference between the contract and noncontract rates. They are all fully familiar with that.

I listened to the testimony about tariffs. Well, the cotton shipper doesn't want a big tariff. When his contract is sent to him he knows what the contract rate is, and shippers of other commodities know the same thing. He wouldn't want a tariff of 150 pages just for his one commodity. So it is widespread to all the shippers by the conferences what the rates are, and they are included in the contracts. If there is any change, that is given to every contract signer so they are thoroughly familiar. They don't have to go to the Federal Maritime Board for the information, or go to the steamship lines or to the conferences for what they have in black and white before them in their contract.

Mr. DORN. Of course, I am frankly more concerned about the spasmodic, small shipper because I feel the big shipper knows all about these things.

Mr. COCKE. We see that he does.

Getting back to the penalty that we are talking about, of course I want to tell you those are my personal views, and I frankly think that legislation should not specifically bring out what the penalty should be, but more or less leave it to the Maritime Board to decide what is fair and reasonable. Certain trades have different points.

The CHAIRMAN. Mr. Pelly.

Mr. PELLY. Just one question along that same line.

I am interested in what protection there is for the general public against exorbitant rates under the dual rate conference system. Mention has just been made by Mr. Dorn of the Federal Maritime Board's finding of a reasonable rate. Is there any protection when a conference files a tariff rate for the public? Is there an investigation by the Federal Maritime Board as to the reasonableness of those rates?

Mr. COCKE. Not unless those rates are complained of.

Mr. PELLY. In other words, the complaint would be investigated?

Mr. COCKE. Yes.

Mr. PELLY. And if everybody found that they were reasonable, the general public found they were reasonable, then they would stand?

Mr. COCKE. Yes.

Mr. PELLY. Secondly, I judge from what you say that under the conference dual rate system there is a very strong element of competition between the independents and the liner services. Is that correct?

Mr. COCKE. That is.

Mr. PELLY. Just clarify that. How many conferences is Lykes operating under?

Mr. COCKE. I would say roughly we are members of about 18 conferences, both outbound and inbound.

Mr. PELLY. In those 18 conferences is there an element of competition from an independent in all cases?

Mr. COCKE. In a great number of them, yes.

Mr. PELLY. In the majority of cases?

Mr. COCKE. Yes.

Mr. PELLY. And you are always under competition for the large shipment from the tramp in that respect?

Mr. COCKE. That is right.

Mr. PELLY. However, you feel, generally speaking, that the competitive feature is not eliminated by the dual-rate system?

Mr. COCKE. I do.

Mr. PELLY. Thank you.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. Mr. Cocke, there has been some mention of penalties. You talk about a penalty imposed on a shipper.

Yesterday there was some talk about an allegedly rather substantial penalty imposed upon a shipper by a conference. Have there been any such penalties imposed by any of the conference groups of which you are a member?

Mr. COCKE. In our conferences there has been one penalty that has been put into effect.

Mr. CURTIN. What happens to the money that is realized?

Mr. COCKE. We haven't gotten it yet.

Mr. CURTIN. What is the provision in your agreement for the disposition of such penalty when it is received?

Mr. COCKE. As a matter of fact, there is no set rule about it. It would go into the conference treasury, in my humble opinion, and be used for expenses.

Mr. CURTIN. There is no provision that it is going to be divided among the members of the conference?

Mr. COCKE. No.

We went on the basis that we wouldn't have any penalties imposed, and there was only one case where this particular shipper violated his conference contract.

Mr. CURTIN. You have made no provision as to what you are going to do with the money when you get it?

Mr. COCKE. No, we haven't.

Mr. CURTIN. And you do not have that in your contract?

Mr. COCKE. No. It simply says penalty collected by the conference, and the conference has not made any provision for that.

Mr. CURTIN. That is all, Mr. Chairman.

Mr. CHAIRMAN. Mr. Glenn.

Mr. GLENN. No questions, Mr. Chairman.

The CHAIRMAN. Did you have a short question?

Mr. DORN. I did, but that is all right.

The CHAIRMAN. Thank you very much.

Mr. ALLEN. Mr. Cocke, one further question on penalties.

What happens to the shipper who is assessed a penalty? Does he get sued for the amount if he does not pay, or is he just refused the agreement at the lower rate until he does pay?

Mr. COCKE. This particular shipper that I mentioned has not paid his penalty. Therefore, he is not a contract signer today, and pays the noncontract rate.

Mr. ALLEN. The only penalty is either to put up the money or be not entitled to lower rates?

Mr. COCKE. That is right.

Mr. ALLEN. Is there any release from the contract if a conference line is not in a position to take a shipment offered?

Mr. COCKE. Oh, yes. If it is offered to the conference lines and they cannot put a ship in position, he is immediately released. We have done that in a number of cases where, for some reason or other, he sold for a certain position and the conference did not have a ship in that position. He was released. But it doesn't happen very often on account of the large number of sailings available.

One point I wanted to bring out—I am sorry Mr. Dorn has left—is there aren't too many increases in rates, but when we increased the rates the conferences protected the shipper for whatever he had sold. In other words, if he had made some sales and had not booked his cargo for certain reasons, he was given protection at the old rate on any sales he had made on or before that date. He was given, you can say, exceptionally good treatment.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. The counsel has some questions.

Mr. COWEN. Mr. Cocke, with respect to your penalty provision against the shipper, is that a unilateral or bilateral contract? Does a shipper have any right of redress against the conference if for some reason they do not accept the shipment on the assigned date?

Mr. COCKE. He would have a claim against the individual line that didn't fulfill its contract, and we would certainly have to pay any damage he suffered.

In other words, if you book 500 bales of cotton for the last half of June loading, and, for some reason or other, you couldn't put a ship in there and he suffered a loss, you would have to favorably consider that claim.

Mr. COWEN. His form of redress then would be against the individual ship?

Mr. COCKE. Individual line; yes, sir.

Mr. COWEN. Whereas the conference would have redress against him for violating the contractual agreement?

Mr. COCKE. That is correct.

Mr. COWEN. One further thing, please, sir.

I notice in your statement, on page 3, where the Cotton Shippers Association met and set out a resolution asking the conference to reduce existing ocean freight rates "and we are pleased to say that material reductions have been secured."

I believe you told Mr. Allen the rate at that time was \$1.85 per 100 pounds. Is that right?

Mr. COCKE. That is right.

Mr. COWEN. Which, as a result of this conference, you reduced to \$1.60?

Mr. COCKE. That is right.

Mr. COWEN. And at \$1.85 you had received an equitable return?

Mr. COCKE. That is right.

Mr. COWEN. At \$1.60 did you receive an equitable return?

Mr. COCKE. Yes, I would say so. At the same time I would like to mention that the Far East conference reduced its rate from \$2.25 to \$2.

Mr. COWEN. I notice on page 4 where a Japanese flag in the Italian trade announced a rate of \$1.28. At that rate could you have received an equitable return?

Mr. COCKE. It would be pretty difficult to operate at that rate.

Mr. COWEN. In the gulf area there has been a nonconference line operating, originally once a month, then every 20 days, and then twice a month, and now approximately 3 sailings a month, with 4 nonconference lines moving in and operating within the area.

Under the Supreme Court decision where there was a stifling of competition, that certainly would not affect your conference for the dual rate system as set up in the gulf area, would it?

Mr. COCKE. No, we don't think it would.

Mr. COWEN. In other words, you feel that under that decision then your dual-rate system as set up in the conference is certainly legal in all phases?

Mr. COCKE. That is our opinion and the opinion of our counsel.

Mr. COWEN. I am inclined to agree with you. I believe they are stifling the conference.

Mr. COCKE. Thank you.

Mr. COWEN. Thank you.

The CHAIRMAN. Thank you very much.

Mr. COCKE. Thank you very much.

The CHAIRMAN. Mr. Furness.

Mr. COCKE. Mr. Chairman, Mr. Sam Nickey, Jr., of Memphis, Tenn., is up here to make a few remarks, and I would appreciate it if you would hear him now.

The CHAIRMAN. Just a minute, please.

Mr. Furness, this committee appreciated your letter of May 31 with reference to the matter that is before the committee. The accuracy of your letter was questioned when it was read, and there were certain statements made which I later had stricken from the record.

Is your letter correct?

STATEMENT OF ROBERT FURNESS, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. FURNESS. Indeed it is, sir. And I was not present, and I have no idea what the chairman is referring to.

The CHAIRMAN. Do you know any reason why the statements in your letter would be challenged?

Mr. FURNESS. I cannot imagine, sir.

I suppose that you are referring to the fact, which is of record, and there is no doubt at all that there were no shippers, large or small, that appeared in the case that eventually was reviewed by the Supreme Court who opposed the dual-rate system.

There are various shippers, large and small, importers and exporters who did testify in favor of the dual-rate system and expressed their views that they preferred regularity of service and dependability of service, stability of rates, over a 10-percent advance in the charges.

The CHAIRMAN. You say:

I wish to emphasize that, although the Federal Maritime Board hearing in that case lasted for 3 months, not a single importer or exporter testified against the system or challenged its legality.

Mr. FURNESS. That is correct, sir.

The CHAIRMAN. That is what was challenged.

Mr. FURNESS. That letter is positively correct. I heard all the witnesses. The hearing lasted 3 months. I couldn't recall their names, of course, but that statement is very positively correct.

It is true beyond any doubt in other hearings where I was not involved that certain shippers have attacked the dual-rate system. In my letter, in this case, there wasn't a single shipper of any type, or exporter or importer of any description that attacked the dual-rate system.

The CHAIRMAN. That is all. I appreciate your coming over here very much. Would you care to say anything else about this subject while you are here?

Mr. FURNESS. Only this, Mr. Chairman: my experience with the Maritime Board lasted about 19 years all together, with time out for the war, and I have been working on the dual-rate problem almost continually since 1936. I think there is no doubt whatever that the commerce of this country would be thrown into complete confusion, even in the simple step of revising tariffs all over the world, if this dual-rate system is allowed by Congress to be, shall we say, scrapped.

I believe that if you use the regular provision in section 16, which would prohibit prejudice, and section 17 which prohibits discrimination across the board, in any rate system of any kind, there would be no danger to any exporter or importer or even a competing carrier to operate under the dual rate system.

Also, I heard the term "umbrella" used this morning. I believe from all the evidence I have heard and all the decisions that I have read that to exactly the same extent that the dual-rate system for the American-flag carriers holds an umbrella over foreign competition, they hold an umbrella over independent competing nonconference carriers. I think that that is a correct statement, and I think that if you should pursue that further with other witnesses you would probably find the same response.

The pending legislation, as I understand it, as I have read it, is merely a sort of stopgap to pause to take a good look at this. I strongly urge, Mr. Chairman, that it would be a very wise move to give everybody—shippers, large and small; importers, large and small; and all of the interests—an opportunity to come in here and participate in a subject this serious.

The CHAIRMAN. I want to express the appreciation of this committee for your coming over here this morning. You appear here with no interest whatsoever either way?

Mr. FURNESS. That is correct, sir.

The CHAIRMAN. Do you appear for the good of the general welfare of the country?

Mr. FURNESS. That is all I had in mind.

I have been in the public service quite a while, as I indicated, and I realize the impact of the whole foreign trade that is involved here, and I have no interest in any carrier of any kind, not as an operator or attorney at all, and I will say that in this matter or in any matter involving dual rates.

I have represented certain shippers, large and small, in the foreign trade, but I am not speaking here in any representative capacity.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. No questions.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions.

The CHAIRMAN. Again I appreciate your courtesy in coming over, sir.

Mr. FURNESS. Thank you, sir.

The CHAIRMAN. Now we will hear Mr. Sam Nickey, of Nickey Bros. Lumber Co., Memphis.

Mr. MALONEY. My name is Maloney. There is a witness here by the name of Gwinup, and he is about to leave. He would be very brief, and I was wondering if he could testify now.

The CHAIRMAN. Then you will have to remain until tomorrow.

All right, let him come up.

Give your full name, sir.

STATEMENT OF GEORGE E. GWINUP, MANAGER, TRAFFIC DEPARTMENT, THE RUBBER MANUFACTURERS ASSOCIATION, INC., NEW YORK, N. Y.

Mr. GWINUP. My name is George Gwinup. I am chairman of the traffic committee of the Rubber Manufacturers Association, 444 Madison Avenue, New York, N. Y.

First, I want to thank Mr. Nickey for standing by for me. I have to be in Chicago tomorrow. So I really appreciate it.

Mr. Chairman and members of the committee, the Rubber Manufacturers Association is a trade association comprised of approximately 180 members. Our traffic committee members are in favor of the bill H. R. 12751 and the bill proposed in the Senate, S. 3916.

My job with the Rubber Manufacturers Association as chairman of the traffic committee is primarily the handling of freight rates, negotiating freight rates with the railroads, with the truck companies and with the steamship companies.

The Rubber Manufacturers Association traffic committee has been negotiating freight rates with steamship conferences for about 30 years, and I have been associated with the association during the last 6 years. During those 6 years I have had many conferences with the various conference chairmen and their members, and we have always come to some agreement as to the proper level of freight rates.

On this negotiation of freight rates, after the rates have been negotiated I, in turn, notify all of our members, large or small, of the result of our conference. In fact, we go to the extent of notifying rubber manufacturers outside of the association of such results. For example, just recently we had freight negotiations on synthetic rubber out of the Gulf, which Mr. Cocke knows about. He failed to mention it. He was talking about cotton here, but he also handles an awful lot of synthetic rubber.

After we negotiated those rates I notified all of the synthetic rubber people regardless of whether they were a member of our organization or not, and that is our practice on all freight rates, whether railroad or steamship or truck shipments.

So our association knows full well what is going on in the transportation business concerning rubber products.

We need a dual-rate proposition here because, mainly, of stability of rates and service. And what Mr. Cocke said about stability of rates when he was talking about the Korean war we agree with 100 percent because we know that during such times, if we are contract members of the conference, our rate is going to be stable and we know that that goes on year after year, and it has been, as I say, in some instances, for as much as 30 years.

We have these freight negotiations with these various chairmen or with the conferences, and how we determine what an equitable rate is with the foreign competition is one of the most important factors. For example, in our crude rubber rates our import rate in the United States from the Far East has to be comparable to the rate from the Far East to the United Kingdom or over to Europe. It has to be favorable in competition with synthetic rubber. So there are many factors that we think of or that we present in talking freight rates. They are all important, and I might say, in my own opinion, if we didn't have this dual-rate system and the close relationship with the conferences it would, no doubt, affect the rubber market.

I am not an economist. I don't want to get into that phase of this business.

In addition to this, I might just say here—and I think that it is worth mentioning—that we believe that the conference chairman—this is pretty farfetched, but we still believe this—should act as a referee in these rate cases, that his salary and his office expenses should be borne equally by the steamship companies and the contract shippers. We seriously believe that because that would put us in a position when we went to the conference to talk freight rates in which we would have a neutral representative there that knows, you might say, the rate business and the industry and the shipping companies, and we would be agreeable to his decision.

Today we go to the conference and it is the rubber industry versus the steamship conference, and we try to negotiate for our mutual interest.

That is all I have to say, sir. Thank you.

The CHAIRMAN. Do you represent 6 or 7 companies.

Mr. GWINUP. I represent United States Rubber, Goodyear, Firestone, Goodrich, General, Armstrong, Thermoid, Ohio Rubber, Converse Rubber, and I could name others.

The CHAIRMAN. They are pretty big American importers and exporters.

Mr. GWINUP. Oh, definitely.

The CHAIRMAN. Do they know of your appearance here?

Mr. GWINUP. Yes, sir.

The CHAIRMAN. And they agreed to your making this statement?

Mr. GWINUP. Yes, that is right.

The CHAIRMAN. They are the biggest in the United States?

Mr. GWINUP. Yes, sir, that is right.

The CHAIRMAN. As well as small business?

Mr. GWINUP. Yes, sir.

The CHAIRMAN. Mr. Allen?

Mr. ALLEN. Thank you, Mr. Chairman.

In the domestic carriage of goods the Interstate Commerce Act, with its provision for a commission and the filing of and publication of rates, and its ability to regulate and adjust rates which are unreasonable or unjust, gives a stability to the domestic carriage of goods and, to an extent, eliminates the unrestricted competition between carriers. In your opinion does the dual-rate system under which foreign commerce is carried have the same objective and accomplish it reasonably well?

Mr. GWINUP. In domestic traffic you think of it this way: of your less-carload rates.

You have your carloading less-carload rates, which are about 10 percent lower. Then you have your common carrier truck rates, and then you have your contract truck rates. So, in domestic traffic you have 4 or 5 sets of rates to govern your shipment whereas in this dual contract we actually only have 1 rate. But there are 2 rates, 1 for the nonmember and 1 for the member. So actually the way I look at it is that we have more of a dual-rate proposition in domestic traffic than you do in the foreign traffic.

Mr. ALLEN. I was getting more at the philosophy behind it, as to whether there is an objective to be accomplished which the conference system does accomplish, as opposed to a completely free competitive system insisting on no agreements between any two carriers, with the unlimited competition and the possible allocation of the ships of each carrier to what happened to be the most lucrative trade at the moment.

I am getting at whether this is a device that accomplishes the stability of rates and service.

Mr. GWINUP. We think it does. We think the dual system of rates is the proper means of getting the job done.

Mr. ALLEN. I was rather interested in your suggestion that the conference chairman be sort of a referee.

In domestic commerce the system of regulations can be imposed by the law of one country. Would it be equally possible to impose that type of referee system all over the conferences into which these various carriers enter?

Mr. GWINUP. The Maritime Board could handle it if they were given the power to do it.

Mr. ALLEN. They could control this end of the commerce, I suppose. I was wondering whether they could with equal facility control the foreign aspects of it in the other countries.

Mr. GWINUP. Where your conference chairmen are here in the United States—and most of them are—it could work very favorably.

Mr. ALLEN. It would be equally true that you could not impose it in the other countries, I suppose.

Mr. GWINUP. I don't think so.

Mr. ALLEN. You might have 2 systems of conferences; 1 ours, and 1 the rest of the world.

Mr. GWINUP. That is right.

Mr. ALLEN. Thank you.

Mr. GWINUP. What I have said here about this is merely a suggestion.

The CHAIRMAN. Thank you very much.

The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 12:15 p. m., the committee adjourned, to be reconvened at 10 a. m., Thursday, June 5, 1958.)

(The following was furnished for insertion:)

SOUTH CAROLINA STATE PORTS AUTHORITY,
Charleston, S. C., June 5, 1958.

HON. HERBERT C. BONNER, M. C.,
*Chairman, Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.*

DEAR MR. BONNER: For the past year or so, we, along with other South Atlantic ports, have lost considerable business between our ports and Puerto Rico by reason of withdrawal of service by American-flag vessels and inability of foreign-flag ships to enter Puerto Rico ports. This is working a distinct hardship not alone upon the port interests, but, similarly, upon South Carolina and other nearby shippers.

By way of validating our confirmed belief that tonnage is available, we recently caused to be made a letter survey (copy of which is available to you), replies from which indicate in excess of 2,000 tons of cargo is monthly available through the port of Charleston. Better than 1,000 tons would come from 1 lumber concern in Augusta which, prior to discontinuance of service here, always utilized the port of Charleston.

Within the past week we have been approached by Mr. W. H. Grier, executive vice president of Rock Hill Printing & Finishing Co., telling us that his firm has commitments for 500,000 pounds per week each way of cotton piece goods for a continuing period. This is big business, but we are estopped for the moment from accepting because of lack of steamer service to Puerto Rico.

We are cognizant that your committee has from time to time given consideration to ship service to Puerto Rico. Accordingly, in view of the present critical situation with which we are faced, we are respectfully requesting that you advise if any degree of relief appears in the offing or if you have any specific suggestion to make to us.

Assuring of our genuine appreciation for the fine work of your committee on all matters affecting our several ports, and daring to hope that you may now be able to suggest a modus vivendi of which we may take advantage, we are,

Very truly yours,

SOUTH CAROLINA STATE PORTS AUTHORITY,
T. CARLISLE CRUMP,
Administrative Assistant.

TO AMEND THE SHIPPING ACT, 1916

THURSDAY, JUNE 5, 1958

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 219, Old House Office Building, Hon. Herbert C. Bonner (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Before we proceed this morning, I wish to make a brief statement with respect to what is before the committee at the present time. The Chair does not consider that the entire subject of the dual-rate system is before the committee.

As I pointed out at the opening of this hearing on Tuesday, we set aside 3 days to hear views on the legislation before us, and the matter before us is H. R. 12751, to hold in abeyance the status quo of the present situation until the committee can study the entire subject at subsequent hearings. The conference system is broad and complex. The basic law, the Shipping Act of 1916, was enacted 42 years ago. A review of that act is certainly in order and, perhaps, changes may need to be made.

However, the sole question in these hearings is whether or not it is desirable that the status quo can be maintained in regard to the dual-rate contract system for an interim period while careful study is given by the Congress to the whole subject.

In order to make a complete record we will have to take a little more time than was originally planned. Accordingly, I have rescheduled the committee's program so we can finish up with this subject this week, tomorrow. Therefore, witnesses not able to present their views today will have the opportunity tomorrow, at which time the hearing will be closed tomorrow afternoon. I will, therefore, greatly appreciate it if all remaining witnesses will be as brief and to the point as possible, and the point is the resolution, in order that we may get all essential facts on the record, without going into matters which will be the subject of more intensive study later on.

I have collaborated with my friend, Mr. Allen, of California, the ranking member here this morning, and I think that it is well and proper that we get some basic facts of the operation of the dual-rate system on the record so as to substantiate the committee's consideration of the resolution before us. Therefore, we are going to finish this subject tomorrow.

The committee continues to receive numerous and various telegrams from large and small business urging the immediate consideration by the Congress of this resolution: from W. P. Fuller & Co., of San

Francisco, the Dow Chemical Co., of Midland, Mich., and so forth. I will ask that these telegrams be placed in the record.

These telegrams, I must say, deal with the subject before the committee.

(The telegrams referred to follow:)

MIDLAND, MICH., June 4, 1958.

HON. HERBERT C. BONNER,
Chairman, House Merchant Marine and Fisheries Committee,
Washington, D. C.:

The Dow Chemical Co. supports the interim legislation introduced in the House and Senate to maintain the status quo of the dual-rate conference system until June 30, 1960, in order to maintain stability in the rate system and to avoid hardship to importers and exporters.

J. A. KENNY,
Foreign Traffic Distribution and Traffic, the Dow Chemical Co.

SAN FRANCISCO, CALIF., June 4, 1958.

HON. HERBERT C. BONNER,
Chairman, House Merchant Marine and Fisheries Committee,
Washington, D. C.:

Strongly recommend committee support current bills in Congress to continue principles of steamship contract rate system in international trade to assure United States suppliers and customers overseas of continuing stabilized rates and regular service.

W. P. FULLER & Co.,
Per W. B. GRIBBLE, *Export Department.*

NEW YORK, N. Y., June 4, 1958.

Congressman HERBERT C. BONNER,
Chairman of the House Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.:

Understand your committee conducting hearings on new legislation regarding dual-rate system, we wish to express our feelings that recent Supreme Court decision will adversely affect the proper conduct of our overseas business. We feel a coordinated transportation market is absolutely necessary and having had, in the past, experience with dual-rate system over a long period, we are of the opinion these arrangements, when adequately administered as heretofore, are immeasurably preferable to sudden fluctuation in rates which always occur in unstable markets. Respectfully recommend favorable action on any legislation which would restore dual-rate system provided our arrangements, concluded with steamship companies, are agreed upon on mutually satisfactory terms.

SEMACK TRADING Co., INC.

LOS ANGELES, CALIF., June 4, 1958.

HON. HERBERT C. BONNER,
Chairman, Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.:

Reference H. R. 12751. Have read Stetson's letter dated April 22, 1958, which subscribe fully. Our export trade depends heavily stability ocean freight rates; otherwise, trading difficult, uncertain, destroying confidence overseas buyers when plentiful supply foreign competing citrus fruits. Also fearful instability rates would discourage adequate service special refrigerated carriage essential fresh fruits. Will appreciate full consideration important need this industry, and we support fully appropriate legislation stabilizing, legalizing, and safeguarding this traffic.

SUNKIST GROWERS, INC.

NEW YORK, N. Y., June 4, 1958.

Congressman HERBERT C. BONNER,

*Chairman, House Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.:*

Having heard your committee conducting hearings on legislation re dual-rate system am prompted to express my opinion that recent Supreme Court decision will adversely affect conduct our foreign commerce. I feel a stable transportation market is necessary and having had experience with dual-rate arrangements during my thirty-odd years in the export field believe this system when properly administered as heretofore is effective solution and preferable to either high or low levels of rates prevalent in open market conditions. Respectfully urge favorable action on any bill which restores use dual-rate system subject only to our negotiations with carrier groups on mutually agreeable terms.

AMERICO MARIN.

NEW YORK, N. Y., June 4, 1958.

HON. HERBERT C. BONNER,

*Chairman of the Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

As an exporter of paper to world markets we fear that disruption of the contract-rate system will create instability of rates with resultant hardship to us. We therefore request pasage of the bill presently before Congress assuring continuance of the contract rate system until June 30, 1960.

J. V. CARENA,
President, Van Reekum Paper, Inc.

RICHMOND, VA., June 4, 1958.

HON. HERBERT C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee,
Congress, Washington, D. C.:*

As exporters of substantial quantities American leaf tobacco worldwide, we wish to express our support of interim legislation to maintain status quo of dual-rate system until June 30, 1960, fearing that disrupting contract-rate system will create chaotic condition respecting rates and service with resultant hardships in carrying on our highly competitive business.

L. A. GLASS,
Traffic Manager, Export Leaf Tobacco Co.

SAN JOSE, CALIF., June 4, 1958.

HON. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
Old House Office Building, Washington, D. C.:*

This association representing the interests of approximately 6,000 grower members engaged in the growing, processing, and selling of various type of dried fruit earnestly requests favorable action be taken on your bill to continue dual-rate contract arrangements now in effect with steamship conferences. We have forward sales made on which buyers are raising their selling costs on present freight rates. This industry must have stability of freight rates in order to be competitive in selling its products in foreign markets.

R. L. JOHANSEN, *Sunswcet Growers, Inc.*

The CHAIRMAN. The committee has before it two letters from Mr. John O'Connor, which it has not had an opportunity to read but before the hearing continues tomorrow, they will be read to the full committee.

We are only going to be able to sit an hour this morning since the House meets at 11 o'clock.

Mr. Ray wanted to hear from the Department of Agriculture. We have Mr. Bucy here. Mr. Bucy is Assistant General Counsel.

STATEMENT OF CHARLES W. BUCY, ASSISTANT GENERAL COUNSEL
FOR MARKETING AND REGULATORY LAWS, DEPARTMENT OF
AGRICULTURE

The CHAIRMAN. You speak for the Department of Agriculture, do you?

Mr. BUCY. Not on the policy question with respect to this bill. Counsel of the committee called me and asked me to come up here this morning. He said there were some questions that the chairman wanted to ask.

As far as the Department's position is concerned, I understand they received a request within the last 48 hours and that they are formulating their policy as far as the matter that is before the committee at this time, so that I am not in a position to speak for the policy of the Department on the legislation under consideration.

The CHAIRMAN. We are confining ourselves to whether or not the general subject shall be held in abeyance as the result of this Supreme Court decision and that hearings be held on the general subject of the conference dual-rate system. Do you have any views on that?

Mr. BUCY. No. The committee, of course, is familiar with the position that the Department held in joining the Department of Justice in the particular litigation, but on the legislation I have no views.

The CHAIRMAN. If you do not desire to answer any of Mr. Ray's questions, we will understand.

Mr. Ray?

Mr. RAY. You were starting to give the reasons for the Department's position in the litigation before the Supreme Court.

Mr. BUCY. No; I stated that I assumed that the committee was familiar with the position of the Department Justice which was joined in by Agriculture in the Supreme Court case.

Mr. RAY. There is an apparent inconsistency between testimony given yesterday as to certain views of the Department or of certain people in the Department, between that on the one hand and the Department's taking the position it took in the litigation.

I wanted to have an explanation of the reasons why the Department felt it desirable to enter the litigation as it did.

If there is a change in policy, I would like to know the reasons for the change.

Mr. BUCY. I have no information as to any change.

I am not familiar with the statement that was made yesterday that you raise at this time, Mr. Congressman.

Mr. RAY. Mr. Chairman, I think if the Department is formulating its policy position we might just be complicating things to go further into the matter with this witness this morning.

The CHAIRMAN. Yes; and I think we had better hear the Department when we go into the general subject in full hearings.

Mr. RAY. The witness can call to the attention of the Department the question in which I am interested so that it can be covered either in their policy statement or in the supplemental statement at the time.

The CHAIRMAN. And you may make the Department aware that this bill is what we have before us at this time and if they care to express themselves on this, they will please notify the committee and we will hear them.

Mr. BUCY. I understand, Mr. Chairman, they are taking active steps right at this time to formulate the policy on this and get to this committee their expression.

The CHAIRMAN. That is not on the general subject but on this bill.

Mr. BUCY. Yes; on the legislation under consideration.

The CHAIRMAN. Mr. O'Connor, I know you are greatly interested and probably would want to get up a little closer here. Do you want to come up here?

Mr. O'CONNOR. I have some hesitation. It might be safer back here.

As I recall the darts and arrows you cast at me yesterday, I do not know but whether hiding in the bulrushes might be safer.

The CHAIRMAN. I want to get you out in the light so that we can get closer together.

The first witness this morning will be Mr. Joseph B. Phillips, traffic manager, Columbian Rope Co.

**STATEMENT OF JOSEPH B. PHILLIPS, TRAFFIC MANAGER,
COLUMBIAN ROPE CO., AUBURN, N. Y.**

The CHAIRMAN. Mr. Phillips, you heard the general statement. Step right up here and address yourself to this resolution.

Mr. PHILLIPS. Mr. Chairman, members of the committee, my name is Joseph B. Philipps, traffic manager of the Columbian Rope Co., Auburn, N. Y.

The Columbian Rope Co. is a manufacturer of all types of cordage and twine. It imports 100 percent of its vegetable fibers from various points throughout the world as does its wholly owned subsidiary, the Edwin H. Fidler Co., of New Orleans.

Besides being an importer, Columbian is also a shipper of abaca fiber, and copra, from the Philippines, and sisal from Brazil to markets throughout the world.

Columbian also imports jute from India, sisal from Haiti, and sisal from British and Portuguese East Africa.

We have supported the dual-rate system mainly because of the stability of rates under such an agreement and also because of the dependable and regular service which conference members afford.

The importance of stability of rates is that it insures an industry of being in a competitive position as far as ocean charges are concerned.

I would also like to add that I believe such a system insures the livelihood of American-flag ships which is most important to our national economy.

I strongly urge the continuance of such a system.

The CHAIRMAN. Are there any questions?

Thank you very much, sir.

Have you read this resolution?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Do you support this resolution and do your associates support it?

Mr. PHILLIPS. That is correct.

The CHAIRMAN. Mr. Richard Staley, Quaker Oats Co. Mr. Peter Labagh, Cannery League of California.

Mr. Labagh, have you read this resolution?

STATEMENT OF P. STEELE LABAGH, TRAFFIC DIRECTOR, CALIFORNIA PACKING CORP., SAN FRANCISCO, CALIF., REPRESENTING CANNERS LEAGUE OF CALIFORNIA AND DRIED FRUIT ASSOCIATION OF CALIFORNIA

Mr. LABAGH. I have, Mr. Chairman.

The CHAIRMAN. Will you give your full name?

Mr. LABAGH. My name is P. Steele Labagh. I am traffic director of the California Packing Corp., of San Francisco.

I am here representing the Canners League of California and the Dried Fruit Association of California.

The Canners League of California has 38 members. They represent 75 percent of the pack. The pack is about 115 million cases per year. Approximately 7 percent, or 8 million, of that is shipped in export.

On the dried-fruit end, there are 26 members representing 95 percent of the industry in California. They ship approximately 30 million cases a year and approximately 5 million of that, or approximately 20 percent of that, is shipped in export.

Both of these organizations are firmly in approval of this proposed legislation in order to maintain the status quo as it exists today of the present dual-rate system so that we may have the present rates and the service that the steamship companies give us.

Not only do I represent these canners and these packers, the packers being the dried fruit packers, but I think behind those canners and packers who buy most of their goods from the farmers of California, the hundreds and thousands of farmers, that it is necessary for those farmers to have us pack their goods and sell them and export them so that they will have a market for their goods so that not only could you say that we are involved but they are also involved in this legislation so that the goods can be transported and disposed of throughout the world in the markets.

If these goods were not disposed of at a profit, why, then, if they were on the market to come back in the local market, it would depress the whole market.

We do negotiate with the conferences and do obtain the rate adjustments from time to time. In fact, just this year, to give you a specific example, we approached one of the conferences and were able to get an adjustment in order to get our goods to Europe on a competitive basis with those goods shipped from South Africa and from Australia, competitive items. in this instance canned goods.

On other occasions, we have gone to the conferences on dried fruits and gotten adjustments to enable us to get into those foreign markets and maintain our goods in those markets and maintain our merchant marine in most markets.

Where we do not have that kind of opportunity, then we are faced with chaos and difficulty. For instance, we had an instance last year in a certain country in the Caribbean where there is no conference. One of the steamship lines raised its rates and the others did not. The Canners League and the Dried Fruit Association both went to the Maritime Commission and filed petition for suspension because of the chaos it creates in the marketing condition in our disposition of our products to have goods go into a market where there is not one rate available to everybody. If there are two rates, you cannot

get all your goods on the boat that has the lower rates and therefore some of your goods go in at a higher rate and some at a lower rate.

In those instances even your own buyers come to you and want you to absorb the difference in the rates.

As to your competitors, you have a difficulty in knowing what your competitors may be paying or you have a difficulty in meeting that competition so that, from the standpoint of the small shipper and the larger shipper, it is very important that we have a stability of rates, that this status will be continued until such time as Congress goes into the matter in full.

Thank you very much.

The CHAIRMAN. Are there any questions?

Mr. RAY. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Ray.

Mr. RAY. It appears from the last few sentences that you spoke that in order to have competition among your members there must be uniformity of rates.

Mr. LABAGH. That is correct.

Mr. RAY. With respect to what other elements is there uniformity?

Mr. LABAGH. If you are speaking of canned goods, canned goods are all packed to a uniform quality. In other words, in order to be packed in California, they have to come up to a certain standard so that, if you sell choice goods in the foreign market, everybody knows what the range of quality is in those choice goods, how many peaches there are in a can within a range or how many pears there are in a can within a range. That is true of all the products that are packed in California. They are all governed by these quality standards so that all the cannerys in California pack within a certain range of quality each different grade of product that they pack.

Dried fruit has the same thing. Everything shipped in dried fruit has to be certified by the Dried Fruits Association as maintaining certain quality, depending on the standard that is sold so that, when a buyer in Europe or any other free country throughout the world has the money buys our goods, they know that it is up to a certain quality.

Does that answer your question?

Mr. RAY. It reaches toward the answer. It puzzles me as to why you think there is a need for uniformity in this one factor. I take it from what you say that there is uniformity in much more than the one factor.

Mr. LABAGH. There is. The only uniformity there is not is in the price. Everybody sells at whatever price they want to but, if they know what the standard is and know what the transportation cost is, they can go into the open market throughout the world and sell at whatever price they can get for their product.

Mr. RAY. They know what their costs are for various steps in their processing. They do not have uniformity in those costs as between plants?

Mr. LABAGH. That is true.

Mr. RAY. That is where the competition enters because of the differences.

I am curious as to why you attach the importance so far as maintaining competition is concerned, which you seem to attach to uniformity as to this one factor.

Mr. LABAGH. Well, in fairness to everybody, it is better that we have uniformity in transportation rates, because, if it were not for uniformity of transportation rates, the larger packer who controls a lot of traffic would be in much better position to take care of the situation than the smaller fellow who only packs a few hundred or a thousand cases. He would not have the same opportunity of going to meetings with the carriers. He is in some little town. He does not get to these conferences. He does not even know that there is a possibility of that because he is so busy in his own one-man business.

Through the Cannery League and through these other associations he is able to be represented and to get the same rate as his biggest competitor and that is an advantage to him. It gives him the opportunity to get into the foreign markets on the same basis as his biggest competitor.

Mr. RAY. The factor of size of operations, of course, goes way beyond the transportation costs as a factor in a competitive situation.

Mr. LABAGH. Well, if you are speaking of efficiency of operation sometimes these small operators are terrifically efficient and if they are smart can be just as efficient as the large fellow. Efficiency does not depend upon largeness. It depends upon how smart the operator is.

Mr. RAY. You have answered my question as you see it, then.

Mr. LABAGH. Yes, sir.

The CHAIRMAN. Are there any further questions?

You come officially speaking for the Cannery League?

Mr. LABAGH. And the Dried Fruit Association, two different associations.

The CHAIRMAN. They know of your appearance here in support of this resolution?

Mr. LABAGH. In support of that particular resolution.

The CHAIRMAN. Thank you very much, sir.

Mr. LABAGH. You are welcome.

Mr. KLUCZYNSKI. Mr. Chairman, may I make a suggestion?

We have only a half hour this morning and I do not know whether we can finish tomorrow morning. I would suggest that we have all those in favor of this legislation raise their hands, give their name and whom they represent, and put the statements in the record. Then we could hear the opponents.

The CHAIRMAN. I am going to go through here as many as I can so that, if there is any question that any member might want to ask the individual, he may do so.

Mr. ZELENKO. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ZELENKO. Do we have any indication of the number of witnesses for and the number against? That may aid us.

The CHAIRMAN. I have the witnesses that want to appear. As to whether they are for or against I do not know.

Mr. ZELENKO. I join in the suggestion, Mr. Chairman, that the prospective witnesses here might indicate whether they are for it, maybe there is a preponderance for it. Perhaps there are 1 or 2 against it. Maybe it is the reverse.

I assume that most everybody that is for it will give identical testimony.

We might save time hearing only those against it. Maybe it is the reverse.

If it is divided we cannot make any progress that way.

The CHAIRMAN. We, for 2 days, have had a general appearance here on the subject of dual rates and it has become very repetitious. The question before the committee is this resolution to give this length of time that the committee may study this entire subject to see whether there might be necessary changes in existing law.

Mr. ZELENKO. I want the chairman to know that I go along with the suggestion of Congressman Kluczynski. It may be a situation where most everybody might be for it or everybody against it, so that it would perhaps be well to give more time to the few witnesses for the minority, whichever it is.

Mr. EWERS. (Ira L. Ewers, Counsel, Moore-McCormack Lines, Inc.). My name is Ewers, Mr. Chairman. I am attorney for Moore-McCormack Lines.

We have a short prepared statement favoring this legislation. We have available to the committee for questioning, Mr. W. T. Moore, the president of Moore-McCormack, Mr. Gerald E. Donovan, Mr. C. H. McGuire, Mr. Frank Bowers, and Mr. Joseph Kelly, who are our traffic experts.

We are at the disposal of the committee.

We favor the legislation. We can have Mr. Moore read the short statement, if that is the pleasure of the committee and file it for the record.

We should also like to file our annual report to answer some of the financial discussions which have been here, but otherwise we are at the disposal of the committee to proceed in such a way as to the committee seems proper.

The CHAIRMAN. Would your witness be available tomorrow?

Mr. EWERS. No, sir. I am sorry. Mr. Moore has to return today, sir.

The CHAIRMAN. I will follow your suggestion, Mr. Kluczynski, if you will let me hear this witness at this time, confining himself to this resolution, if you will.

The subjects that you mentioned will come up in the overall hearings.

Mr. EWERS. There have been some inquiries from members of the committee that we felt, out of courtesy to the committee, we should have our experts here prepared to answer.

We are at your disposal, sir.

The CHAIRMAN. All right. We will take you right now, then.

I want to follow Mr. Kluczynski's suggestion.

Will those who oppose this resolution stand so that I can get some idea? Will you give your name, sir?

Mr. TRIGGS (Mathew L. Triggs, American Farm Bureau Federation). Mat Triggs, American Farm Bureau Federation.

The CHAIRMAN. Mr. Triggs?

Mr. TRIGGS. Yes, sir.

The CHAIRMAN. The other?

Mr. KRINKLEY. My name is Krinkley, with the Isbrandtsen Co. of New York.

The CHAIRMAN. You gentlemen are opposed to the resolution. I will see that you are heard shortly.

I have been asked by a member of the committee to ask those who are for this resolution to stand up.

Proceed, Mr. Moore.

STATEMENTS OF WILLIAM T. MOORE, PRESIDENT; GERALD E. DONOVAN, FINANCIAL VICE PRESIDENT; AND IRA L. EWERS, COUNSEL, MOORE-McCORMACK LINES, INC., NEW YORK, N. Y.

Mr. MOORE. Mr. Chairman, my name is William T. Moore. I am president of Moore-McCormack Lines, Inc., of 5 Broadway, New York City.

I appear in support of H. R. 12751 and identical bills.

Moore-McCormack owns and operates 43 vessels connecting 4 continents—the east and west coast of North America with the east coast of South America, and the Atlantic coast of North America with Scandinavia and Africa. We are members of conferences or rate agreements in all of our trades. In the South American trade, we have 19 foreign competitors who voluntarily operate under the conference systems. The same is substantially true of most trades. Studies prepared by Maritime show that there are only 1 or 2 American-flag liner operators who do not belong to conferences in their particular trades. Certainly the entire shipping world cannot be out of step but one or two Jims.

We are a subsidized operator. Our subsidy is substantial because our crew wages are much higher than our foreign competitors because of our high American standard of living. It is not true, as Mr. O'Connor has intimated, that we distribute all of our subsidy as dividends, nor does the amount of one have any relation to the amount of the other except by coincidence.

As a matter of fact we were the first to enter into an operating differential subsidy contract in 1938. We bought the first ship built under the 1936 act. We were the first to replace all of our old fleet commencing in 1938, and to agree to do so again in 1955.

Our operations are fairly reflected by our last annual report, a copy of which is submitted with this statement.

What the figures do not fully reflect, however, is that we have agreed with Maritime, if economically feasible, to build 2 new passenger vessels and 43 new cargo ships at a gross cost of almost a half billion dollars and a cost to us of over \$300 million. This means the operation of vessels costing \$500 to \$600 a ton instead of about \$100 a ton. We have already contracted for 2 new passenger vessels which will soon be delivered and 4 new cargo vessels. We expect to contract for 3 more cargo vessels this year.

Without going into all of the details I can assure you that participating in the Government's replacement program requires an optimistic viewpoint as to future revenues and earnings that we sometimes doubt.

The present situation contributes substantially to that doubt—to say the least.

Reference to our annual report will show that a small percentage-wise reduction in revenues could convert a fair profit into severe loss. Instability of freight rates could well have that effect.

I am alarmed that it is proposed that we should revert to the jungle law of dog-eat-dog which is not sensible for rational beings who should profit by previous experiences.

In our domestic economy, transportation is regulated because that has been found to be in the best interests of the owners, operators, shippers, labor, Government, and the public.

Substantially the same conclusion as to international commerce was reached in 1914 by the Alexander committee, which recommended the conference system, and by a contemporaneous Royal British Commission which went further and even favored deferred rebates.

The conference system is a method of governmentally supervised self-regulation which is as near as we can approach in the international transportation field to what is regarded as necessary in domestic transportation in view of overlapping international jurisdictional problems.

We have found that the conference system without contract rates is almost worthless in maintaining stability, but even with contract rates it has not reached its full stabilizing effect because of the doubts raised concerning its legality.

We most strongly urge that these doubts be removed, immediately and permanently if possible, but in no event should the contract rate system be permitted to disintegrate since this would result in rate wars, which not only are ruinous to owners, operators, shippers, Government, labor, and the public, but would also substantially strain our already tense international relations.

The CHAIRMAN. That concludes your statement?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Mr. Boykin?

Mr. BOYKIN. I have no questions.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman.

Mr. Moore, I note in your statement of income in the report that for the year 1957 the operating differential subsidy is slightly over \$17 million.

The provision for Federal income taxes is \$4,750,000.

The recapture is \$700,000, and the net income is slightly over \$6 million.

Are those figures in any way related to the operating differential subsidy in one year producing more or less income than that year?

Mr. MOORE. I would not say so, sir.

Mr. ALLEN. Going a little further, I note that in the year previous the subsidy receivable was a little over \$12 million, about \$5 million less than 1957, and the net income about the same.

Mr. MOORE. Sir, the reason for that is that in that year we purchased the Pope & Talbot Pacific Argentine Brazil Line, from the west coast of the United States to east coast of South America and also the Robin Line to Africa, and the reason for the increase in the subsidy and also the revenues is largely due to those services.

Mr. ALLEN. Apparently the subsidy went up about 50 percent and the revenue stayed where it was.

Mr. MOORE. I do not have it before me.

Mr. ALLEN. It seems obvious that there is no direct connection between the two amounts.

Mr. MOORE. There is no direct connection.

The CHAIRMAN. Did you care to comment on the subject Mr. Allen raised?

Mr. EWERS. Mr. Donovan, our financial vice president, I think is best capable to answer that. May the question be reread to Mr. Donovan?

Mr. ALLEN. The general subject is as to whether or not the payment of the operating differential subsidy produces a different profit year by year or what is the relationship between the two?

Mr. DONOVAN. Well, the payment, of course, of a subsidy is a payment of a differential as between the foreign and the domestic cost, chiefly wages, which in itself guarantees no profit. You have years when you make a profit without subsidy and other years when you would not have made a profit without subsidy.

It is of course, on the other hand, true that the swing in the subsidy amount has that much of an effect on the net result, all other factors being equal, which, of course, they seldom are.

There is no relation of the final profit and dividend amount to the particular subsidy paid in any one year as is very evident from the figures year to year.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Garmatz.

Mr. GARMATZ. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Van Pelt.

Mr. VAN PELT. I have no questions.

The CHAIRMAN. Mr. Kluczynski.

Mr. KLUCZYNSKI. I have no questions.

The CHAIRMAN. Mr. Ray.

Mr. RAY. I have no questions.

The CHAIRMAN. Mr. Rivers.

Mr. RIVERS. I would like to ask Mr. Moore, does the philosophy behind this dual rate in anywise conflict with the philosophy behind the Sherman antitrust statutes?

Mr. MOORE. Sir, I am not a lawyer. However, it is my feeling that if we are to have a stabilized system of foreign transportation under the American flag, that a dual rate conference system is necessary.

Mr. RIVERS. Well, you would say, then, that it is more within the philosophy of the Interstate Commerce Act?

Mr. EWERS. I think legally that is true, sir. Insofar as the conference system might run afoul of the antitrust legislation, approval by the Maritime Administration takes it from without the compass of the antitrust statutes.

Mr. RIVERS. Because of the Government participation by way of the Maritime Administration?

Mr. EWERS. That is correct.

Mr. RIVERS. They oversee these agreements and tariffs.

Mr. EWERS. None of these agreements are permitted to become effective or remain effective except so long as the Federal Maritime Board lends their approval to the agreement and to the operation of the agreement.

Mr. RIVERS. I think that ought to be in the record. That is why I asked the question.

Mr. EWERS. We tried to say that, sir, in saying that the effect of these conferences is a governmentally supervised system of self-regulation and Maritime becomes quite rigorous sometimes in revising agreements to take care of what they consider to be the public interest.

The CHAIRMAN. Mr. Ewers, will you address yourself to the 1916 act in conjunction with what you are talking about now?

Mr. EWERS. In the 1916 act, I think its bearing on this problem can best be reflected by the minority decision in the Supreme Court

of the United States. Congress, in 1916, instructed Maritime to approve all agreements which were not found inimical to the commerce of the United States. It specifically prohibited certain what they called predatory practices that were reviewed in the Alexander report.

The Alexander report was fully cognizant of the act of deferred debates, fighting ships, dual rates, and other tie-ins, and they specifically prohibited those which they considered inimical.

The dual rate system was well known to the legislators at that time and is not specifically prohibited as are the other predatory practices frowned upon. The Supreme Court found that in their opinion the so-called dual rate system ran afoul of certain very general provisions in the 1916 act although to me, who has lived with this problem since then, I am quite sure that if Congress knew about dual rates and had intended to make them illegal, they certainly would have specifically done so as they did these other practices which were discussed in the review by the Alexander committee.

Mr. RIVERS. Could I inquire, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. RIVERS. When was that decision rendered?

Mr. EWERS. Incidentally, have you made that a part of the record, Mr. Chairman?

The CHAIRMAN. That is a part of the record in the 2 days' proceedings.

Mr. EWERS. If it has not been put in, I would like to submit it. It was rendered on May 19, 1958. I will be glad to leave a copy with you.

The CHAIRMAN. That is a part of the record at the present time.

Mr. RIVERS. Thank you.

The CHAIRMAN. Are there further questions? Mr. Zelenko.

Mr. ZELENKO. May I ask you this question, sir. Does this system of dual rate assist in overcoming or meeting foreign competition in some way?

Mr. EWERS. Only in this respect, sir: In the principal route of Moore-McCormack Lines, we have about 19 foreign competitors. Under the Dual rate system we regulate ourselves satisfactorily. If we did not have this system of self-regulation and had a rate war, with our 19 foreign competitors being completely un-self-regulated, we would very soon go broke.

Mr. ZELENKO. Therefore, does that not bring about the distinction between the dual rate system, which in effect is price fixing in a general way and the Sherman antitrust and all the other monopoly statutes that we have which deal only with competition within the borders of the United States? Is that a distinction?

Mr. EWERS. The Maritime Board, sir, drew this distinction which I believe to be sound and which has been administered in that fashion since the early twenties.

The contract rate system as between one carrier would not be approved because it would deprive the shipper of any selection of means of transportation but as a means of self-regulation where there was a conference in which there were 10, 12, 15 or 20 different ship operators that a shipper could select, Maritime felt that that was no undue restriction on competitive opportunity or on selection of carriers.

Mr. ZELENKO. Of American carriers?

Mr. EWERS. Any carriers, sir.

Mr. ZELENKO. May I ask you this, sir. What you say of your company and your 19 competitors, would that be substantially true of other companies with their competitors on different routes?

Mr. EWERS. In greater or less degree, sir. In some of our trades we have 20, in others 8, in some 10, in some 4.

Mr. ZELENKO. A rate war involving you and foreign competitors and other American companies and their competitors, some of which come under Government subsidy, would, in the end, have the Government paying for keeping all of you people in business. Would that be so?

Mr. EWERS. No, sir. It would not operate quite in that manner but the moneys which we have reserved for ship replacements would very soon be dissipated, sir.

Mr. ZELENKO. The point that I wanted to determine was the distinction between the ordinary antitrust and antimonopoly statutes that deal with inland problems within our borders and this peculiar and particular problem dealing with the shipping industry. There is a distinction.

Mr. EWERS. There is a distinction and the antitrust statutes generally do not operate with respect to regulated utilities.

Mr. ZELENKO. I know that what Congressman Rivers was trying to get at, which is the point of my question, is that we do not want to be in a position of guaranteeing monopoly or price fixing as such. We are not doing that, are we, in your opinion?

Mr. EWERS. Certainly we do not think so, sir, when we have 19 competitors all hungry for the same traffic.

Mr. ZELENKO. I am thinking of it from the consumer's standpoint.

Mr. EWERS. From the consumer's standpoint, he has the selection of 1 of 19 different operators in the South American trade alone.

Mr. ZELENKO. Does this operate to his detriment?

Mr. EWERS. No, sir. The strongest supporters for stabilized rates are the shippers themselves, as you have heard the testimony here.

I might give you a homely example that impresses me when I first started to practice law. In the lumber business on the Pacific coast, your lumber cost was \$10 a thousand and your transportation cost was \$10 a thousand. The tramp comes in and takes the lumber for \$5 a thousand. The lumber dealers who had stockpiled lumber automatically suffered an inventory loss of \$5 a thousand and they were most vociferous in support of stabilized rates, as you gentlemen have seen here today for that and similar reasons.

Mr. ZELENKO. Who is the consumer in the situation?

Mr. EWERS. The shipping public would be as near to the consumer category here and they have, as I say, almost uniformly been in support of this and similar types of rate stabilization.

Mr. ZELENKO. I have no further questions.

The CHAIRMAN. Mr. Pelly.

Mr. PELLY. I have just one question.

Could I ask counsel for the company, would you comment further regarding the question which Mr. Zelenko gave you as to the absence of any competition? Is it not true that a shipper can avoid using conference groups and use independents and therefore it is necessary

for the conference group to keep their rates down on a competitive basis?

Mr. EWERS. Yes, sir; that is true and that frequently happens that a nonconference tramp will see an opportunity to pick up a full cargo of some desirable cargo and, when that happens and if the cargo is not controlled by the contract rate system, all that the conference can do to meet it is to open the rate so that the conference and nonconference members may bid alike for the particular traffic that is offering.

The ill effect of that is that it is very sporadic. There may not be another tramp in there for a year who would be interested in that and the lines that are serving the trade the year round are the ones that have to suffer and the shippers have a rate instability which makes their marketing problems quite serious.

If I may, I should like to supplement my remarks about the anti-trust aspects.

I am reminded that it is not considered feasible to apply the American antitrust statutes in all cases to international transportation, because many nations are invariably involved within the problem and our attempt to regulate other than by ourselves would immediately run afoul of the jurisdiction that foreign countries feel that they have over the transportation between the two countries.

The CHAIRMAN. Mr. Ewers, what you are discussing here is eventually going to have to be discussed when the committee goes into this program during the period provided in this resolution.

Mr. EWERS. That is correct.

The CHAIRMAN. All that is going to have to be gone into. What I want here is, will you address yourself shortly to this resolution and the benefits or deterrents that may follow?

Mr. EWERS. Speaking as a lawyer, sir, what I assumed we were doing here today is making out a prima facie case as to the wisdom of the dual rate system. We will have hearings on the full merits of it within the interim period provided for in the resolution.

The CHAIRMAN. Yes, but the point is this resolution.

Mr. EWERS. I think we have certainly made a prima facie case that it is necessary and desirable not to permit the contract dual rate system to disintegrate while the study is being conducted.

The CHAIRMAN. Would you address yourself to what may happen should this resolution not become law?

Mr. EWERS. Should this resolution not become law, it is entirely possible and probable that rates in all conferences would be declared open, which would mean a rate war.

The CHAIRMAN. Would not having this resolution bring further litigation?

Mr. EWERS. There is a certain fuzzy zone in the Supreme Court's decision which may or may not be argued does apply to conferences in general as distinguished from the particular conference that was under consideration in that particular case. It has at least raised enough doubt concerning all conferences to require immediate legislation.

The CHAIRMAN. Are there any questions?

Mr. Ashley?

Mr. ASHLEY. I have no questions.

The CHAIRMAN. Mr. Glenn.

Mr. GLENN. I have no questions.

Mr. EWERS. In connection with this antitrust situation, may I call attention to the statement made at page 20 of the decision which I think very clearly reviews just what the antitrust picture is in international trade. It commences at the bottom of page 20.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman, I would like to get back to this operating subsidy and the profit situation.

If you had a rate war, would it be possible that Moore-McCormack would fail to earn any profit?

Mr. EWERS. Yes, sir.

Mr. ALLEN. If Moore-McCormack failed to earn a profit, would the operating differential subsidy be affected by the rate war?

Mr. MOORE. May I comment?

Mr. EWERS. I think Mr. Moore is more capable to answer that.

Mr. MOORE. If we did unfortunately get into a rate war there is no doubt in my mind but that we would lose money. Under the act as I understand it, certain amount of our profit is put into a reverse recapture so that during the first 10-year period or at least with Moore-McCormack the Federal Government took back all the subsidy that the company was paid. That, of course if we lose money, would be out the window.

Mr. ALLEN. I am just getting to the 1957 column. It does not seem to me that you would operate fewer trips because of a rate war and if the trips were the same the subsidy would be the same.

Mr. MOORE. That is correct.

Mr. ALLEN. If you had a rate war, there would not be any recapture and the Government would lose \$700,000 of that year's recapture.

Mr. DONOVAN. Mr. Allen, it just so happens that that \$700,000 there, just for the record, is what Mr. Moore referred to as reverse capture going the other way, but your statement is correct.

Mr. ALLEN. I am just getting to the 1957 column. The Government would lose the \$4,750,000.

Mr. DONOVAN. That is correct.

Mr. ALLEN. So that in a rate war not only does the company lose and the shipping public become faced with unstable service and unstable rates, but the Government itself would lose something like \$6 million or \$7 million of Moore-McCormack's money.

Mr. DONOVAN. Of Moore-McCormack's contribution to the Government through those two sources.

Mr. ALLEN. Still, the Government would pay the same subsidy.

Mr. DONOVAN. That is exactly correct.

Mr. RIVERS. Would the gentleman yield, Mr. Chairman?

Mr. ALLEN. Yes, sir.

Mr. RIVERS. It would also follow that there would be liquidated a lot of companies who are now rendering a service. They would be out of business during the long duration of time when the rate war was in existence.

Mr. MOORE. That is right. I think that probably other companies that are agents for foreign companies and contribute to the United States through taxes would be lost. The United States Government would lose that, certainly.

Mr. ALLEN. Do these companies owe the Government any money on mortgages?

Mr. MOORE. You mean Moore-McCormack?

Mr. ALLEN. All of these subsidized lines.

Mr. DONOVAN. Many of them do; yes, sir.

Mr. ALLEN. Up to 75 percent of the value of the ships.

Mr. DONOVAN. As originally costed, yes.

Mr. ALLEN. It would be pretty hard for the Government to collect that, would it?

Mr. DONOVAN. It could be indeed.

Mr. ZELENKO. Would the gentleman yield?

Mr. ALLEN. Yes.

Mr. ZELENKO. I think Mr. Allen's point is somewhat along the line that I suggested before. Just to sum up, if this dual-rate system disintegrates, the Government will stand to lose money.

Mr. MOORE. That is correct.

Mr. ZELENKO. Is that right?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. EWERS. Mr. Chairman, may I have a half minute for a tie-in statement by Mr. Purdon?

The CHAIRMAN. I was going to call Mr. Purdon.

STATEMENT OF ALEXANDER PURDON, EXECUTIVE DIRECTOR, COMMITTEE OF AMERICAN STEAMSHIP LINES

Mr. PURDON. Mr. Chairman and gentlemen, my name is Alexander Purdon, executive director of the Committee of American Steamship Lines.

I have been asked by our executive committee to say that the prepared statement given by Mr. Moore is in accord with the views of all the subsidized lines who are members of our committee, that we join in his statement and in his endorsement of the early passage of legislation before this committee.

I would like to add that in the last month I have had the opportunity of visiting a number of foreign countries. I was abroad when the news of the Supreme Court decision was made public and I found among our representatives in foreign countries a sense of alarm because they feel that in the present international freight situation, all of the elements of a rate war are immediately present and unless some corrective action is taken they feel that we will have at disastrous situation.

I would like to read to you, sir, two paragraphs from a letter which our committee addressed to the Federal Maritime Board, and ask that the full letter be made a part of the record.

While further litigation might possibly clarify the Supreme Court's ruling, the time required so to do and the uncertainty that would prevail in the interim would seriously impede and possibly frustrate the accomplishment of the provisions of the Merchant Marine Act of 1936. * * *

A conference system without sanctions is almost worthless. The only effective sanction heretofore considered lawful under the Shipping Act of 1916 is the dual rate contract system. During any period in which the lawfulness of that system is further litigated through the courts, under circumstances claimed to be distinguishable from those in the Isbrandtsen case, the contracts would be unenforceable against the shipper signatories. In our judgment, unless remedial legislation is enacted promptly the conference system will be ineffective and powerless to stabilize rates. We believe that if the dual rate contract system as it has developed is required to be suspended for any considerable length of time, it

would literally take years to redevelop it to the point where it would have a stabilizing effect upon the industry.

Our committee heartily endorses the legislation and urges its prompt enactment.

May I have this put in the record?

The CHAIRMAN. Are there any questions of Mr. Purdon?

The letter will be inserted in the record at this point.

(The letter referred to follows:)

COMMITTEE OF AMERICAN STEAMSHIP LINES,
Washington, D. C., June 2, 1958.

HON. CLARENCE G. MORSE,
Chairman, Federal Maritime Board,
Washington, D. C.

DEAR MR. MORSE: The executive committee of the Committee of American Steamship Lines has instructed me to emphasize to you the concern of our member companies over the situation created by the split decision of the Supreme Court of the United States on May 19, 1958, in the so-called Isbrandtsen case whereby the legality of the so-called dual-rate conference rate was brought into question, and to urge that you recommend immediately to the Congress the necessary legislation to confirm the views of your Board as to legality of the dual-rate system.

While further litigation might possibly clarify the Supreme Court's ruling, the time required so to do and the uncertainty that would prevail in the interim would seriously impede and possibly frustrate the accomplishment of the provisions of the Merchant Marine Act of 1936.

The necessity for the regulation of public utilities, including carriers, has become entrenched in our national system and the supervised self-regulation provided by the conference system is as close as we can come in the international trade to obtaining that stability which is desirable to governments, shippers, ship operators and labor.

A conference system without sanctions is almost worthless. The only effective sanction heretofore considered lawful under the Shipping Act of 1916 is the dual-rate contract system. During any period in which the lawfulness of that system is further litigated through the courts, under circumstances claimed to be distinguishable from those in the Isbrandtsen case, the contracts would be unenforceable against the shipper signatories. In our judgment, unless remedial legislation is enacted promptly the conference system will be ineffective and powerless to stabilize rates. We believe that if the dual-rate contract system as it has developed is required to the suspended for any considerable length of time, it would literally take years to redevelop it to the point where it would have a stabilizing effect upon the industry.

Under section 212 (f) of the Merchant Marine Act of 1936, the Board is authorized and directed from time to time to make recommendations to Congress for legislation deemed necessary to effectuate the purpose and policy of that act. We knew of no area more critically requiring prompt recommendation by the Board to Congress.

Under the current operating-differential subsidy contract and the provisions under title XI of the act, new construction and its financing require the Board to make findings of economic feasibility. This Board has stated, and the subsidized lines agree, that rate stability in the foreign trades requires a contract rate system or its equivalent. The industry knows, as does the Board, that rate stability is essential not only to our foreign trade but also to a healthy steamship industry. We must, as forcefully as we can, direct your attention to the problems and difficulties with which the Board will be confronted in seeking to make determinations of economic feasibility of new construction, without having assurance of rate stability in the trades in which the vessels are to be operated.

We have just learned of Senator Magnuson's introducing S. 3916. In addition, we understand that Representative Bonner will introduce similar legislation in the House today, and that he has already scheduled hearings to being thereon on Tuesday, June 3. We are informed that you, as well as CASL, will be invited to testify. In view of these developments, may we respectfully urge you to make known to the committee during your appearance the contents of this communication.

Very truly yours,

SOLON B. TRUMAN, *Chairman.*

The CHAIRMAN. There are four gentlemen who merely desire to file statements.

Mr. Carpenter, State Marine Lines.

STATEMENT OF JOHN TILNEY CARPENTER, STATE MARINE AND ISTHMIAN LINES

Mr. CARPENTER. Sir, I have no statement to file. I want to tell you that our ambitious program of hundreds of millions of dollars of replacements of ships of the State Marine and Isthmian Lines that I represent is jeopardized.

I cannot go to banks or insurance companies to ask them to lend us the money even with the construction differential subsidy if we cannot tell them that we are going to stay in business and make money and make profits and be able to pay our debts.

I have been in this matter for 30 years and I appeal to you with all the fervor at my command.

I was the lawyer for United States Navigation against Cunard. I lost my case in the United States Supreme Court 30 years ago and I thought that the conference dual-rate system was once and for all settled legally under the police powers of the Federal Maritime Board. They have been exercising that power.

I do not have a prepared statement. I want to talk.

The CHAIRMAN. I just want to ask you one question then.

I presume that you testify in favor of the immediate passage of this resolution?

Mr. CARPENTER. Very much so.

The CHAIRMAN. Mr. Hamm of the Alcoa Steamship Co.

STATEMENT OF WILLIAM HAMM, ALCOA STEAMSHIP CO.

Mr. HAMM. I will be willing, in the interest of conserving time, to waive my appearance and submit a statement.

The CHAIRMAN. Does your statement support this resolution, H. R. 12751?

Mr. HAMM. Yes, sir; it does, sir.

The CHAIRMAN. Do you ask for its immediate consideration by the Congress?

Mr. HAMM. We strongly urge it.

The CHAIRMAN. For what purpose?

Mr. HAMM. For the purpose of preserving stability in the trades and for the purpose of helping us plan ahead in the future construction of our ships to replace our old ships presently in use.

(The statement is as follows:)

STATEMENT OF WILLIAM L. HAMM, SPECIAL REPRESENTATIVE AND ATTORNEY, ALCOA STEAMSHIP Co., INC., IN SUPPORT OF H. R. 12751; H. R. 12758; AND H. R. 12748

My name is William L. Hamm. I am special representative and attorney for Alcoa Steamship Co., Inc., with headquarters in the city of New York at 17 Battery Place. I appear before this committee in strong support of the legislation under consideration.

Alcoa Steamship Co., Inc., owns 16 American-flag vessels. Six of these ships are engaged in the Puerto Rican-Virgin Islands trade from United States Atlantic and Gulf ports. Three of them are cargo-passenger vessels regularly employed in common carrier service between Mobile, New Orleans, and foreign ports in the

Caribbean area. The remaining seven are at times employed either in the Puerto Rican-Virgin Islands trade or in the trade to foreign Caribbean and north coast of South American ports from United States Atlantic and Gulf ports and at other times are chartered out to various American-flag steamship companies. Alcoa does not operate under subsidy. Alcoa also operates foreign-flag vessels from time to time in its various common carrier services.

In all of the common carrier foreign services we maintain, freight rates have been declining primarily because of nonconference liner and tramp competition. There are now as many as six nonconference berth services in operation on routes where our vessels are employed. In addition, there is occasional tramp service when sizable cargo offerings are available. There is also the usual continuing rate pressure generated from competitive origins such as Canada and Europe, as a result of which our conferences customarily reduce their rates in order to keep United States commerce on a competitive basis.

Most of this berth service nonconference competition has been on two of our major trade routes where the conferences have dual-rate systems in use. While dual rates have neither prevented nor eliminated competition, they have strongly tended to immunize these conferences against the debilitating effects of the cut-rate competition virus.

It was the intent of the Shipping Act of 1916 to legitimize, under proper safeguards, the self-regulation of the shipping industry. The device chosen to effectuate this intent was the conference. It is apparent that to the degree conferences are weakened, the intent of the act is frustrated. It is even more apparent that the elimination of the dual-rate system will weaken conferences by removing the only workable, effective tie to shippers. The result can only be increased instability.

Alcoa has under serious consideration a substantial American-flag vessel-replacement program. The imminent prospect of increased rate instability, when added to an already difficult rate situation, may well result in delay in effectuating this replacement program.

We strongly urge the committee to enact legislation in the form of H. R. 12751, H. R. 12758, and H. R. 12748.

The CHAIRMAN. Thank you, sir.

Mr. Slater, American Export Lines.

STATEMENT OF FELIX W. ISHERWOOD, ASSISTANT VICE PRESIDENT, AMERICAN EXPORT LINES, INC.

Mr. ISHERWOOD. Mr. Slater is unfortunately not here but the American Export Lines heartily endorses the passage of this bill.

The CHAIRMAN. This resolution H. R. 12751?

Mr. ISHERWOOD. That is correct, sir.

The CHAIRMAN. For the purposes heretofore stated?

Mr. ISHERWOOD. That is correct.

The CHAIRMAN. The statement may be filed for the record.

(The statement referred to follows:)

STATEMENT OF FRANK G. SLATER, VICE PRESIDENT OF AMERICAN EXPORT LINES, INC.

I am appearing before this committee in support of proposed legislation which would legalize, at least for a temporary period, any dual rate system now in use by members of a steamship conference organized under an agreement approved under section 15 of the Shipping Act by the Federal Maritime Board.

My appearance here is on short notice, so my statement will be brief. I am, however, in complete agreement with the urgency of the present situation. It is most important that action on this subject be taken promptly.

American Export Lines is an American-owned shipping company. We operate under an operating differential subsidy agreement with the Government and are subject to all the restrictions as well as the benefits of such agreement. We and our predecessors have been operating an American steamship line since 1919.

We now own and operate under the American flag, a total of 30 ships. These include the 2 large passenger liners, the steamship *Independence* and the steamship *Constitution*, which operate to ports in the western Mediterranean; 4 com-

bination passenger and cargo ships, known as the 4 Aces, and 24 freighters. We operate throughout the Mediterranean area on what has been designated essential trade route No. 10. We also operate through the Suez Canal, the Red Sea, and Gulf of Aden to India, Pakistan, Ceylon, and Burma, on a route designated as essential trade route No. 18. We are right now in the midst of a program to replace our freighters with more modern and faster ships.

American Export is now a member of the following conferences which use the dual rate system: North Atlantic-Mediterranean; India, Pakistan, Ceylon, and Burma; Calcutta-United States; and west coast of Italy and North Atlantic range.

In view of the recent decision of the Supreme Court there is some question whether these conferences may continue to employ the dual rate system. In my opinion and in the opinion of my company, it would be most unfortunate for the company and for the American shipping industry generally if the dual rate systems were discontinued. We feel that they have contributed greatly to stability in the trades where they have been used and that they are desirable from the standpoint of both the shipping companies and the shippers.

We believe it would be particularly unfortunate if all the dual-rate systems were discontinued at the present time. Even as it is, the cargo market is in a definitely depressed state as a result, at least in part, of the current recession which American industry has been experiencing.

We are fearful that if the dual-rate system is discontinued this may in many areas lead to rate wars between carriers which would disturb the stability of fair competition and the regularity of services being rendered by steamship carriers in these areas. This would be a great disservice not only to the shippers and receivers of cargo but also to the carriers in the trade. It is our opinion that the shipping public is much more interested in continuous stable shipping services and stable rates and tariffs at fair and just rates than it is in cut rates provided by an itinerant carrier seeking cargo for a particular voyage but not primarily interested in stable year-round service to the shipping public at fair competitive rates.

Should such a situation be permitted to come about at this time, the effect upon the American merchant marine might be very damaging and result in the loss of a considerable part of the gains it has made under the shipping acts.

We urge that you take such legislative steps as may be necessary to enable the conferences to retain the dual-rate system. While we have no doubt as to the desirability of retaining this system on a permanent basis, we believe that Congress should authorize the continuation of that system at least until you and the rest of Congress have had an opportunity to study more carefully the effect of discontinuing this system.

STATEMENT OF T. R. STETSON, PACIFIC COAST BORAX CO. DIVISION, UNITED STATES BORAX & CHEMICAL CORP.

Mr. STETSON. I am Mr. Stetson. I would like to file a statement in support of the resolution.

The CHAIRMAN. You are with the Pacific Borax Co.?

Mr. STETSON. Yes, sir. We the largest borax producer and shipper in the world.

The CHAIRMAN. Do you support this resolution?

Mr. STETSON. Yes, sir. I have a prepared statement which I would like to file for the record.

The CHAIRMAN. You only appear for the Pacific Coast Borax Co.?

Mr. STETSON. That is right.

The CHAIRMAN. What is your official capacity?

Mr. STETSON. I am manager of the export sales division of the Pacific Coast Borax Co. division of the United States Borax & Chemical Corp.

We support the need for regular and frequent service.

The CHAIRMAN. Your statement will be filed at this point in the record.

(The statement referred to follows:)

STATEMENT OF T. R. STETSON, ON BEHALF OF PACIFIC COAST BORAX CO., DIVISION
OF UNITED STATES BORAX & CHEMICAL CORP.

My name is T. R. Stetson. I am appearing before your committee on behalf of Pacific Coast Borax Co. division of United States Borax & Chemical Corp., of which I am the manager of the export sales department. The United States Borax & Chemical Corp. owns and operates at Boron, Calif., the world's largest known deposit of borate. It is the largest producer and exporter of borax and borate products; accounting for about 70 percent of the total United States production of which approximately 45 percent is exported from the United States. Shipments to worldwide destinations run to tens of thousands of tons per annum. Irrespective of commodity, it is one of the largest shippers from the Pacific coast. It depends on the carrier members of various conferences operating from the Pacific coast to different parts of the world to carry its tonnage, practically all of which moves through the Los Angeles-Long Beach Harbors.

Our commodities are raw materials used by buyers throughout the world in a multitude of processes and finished products. They have to plan their usage and requirements months ahead in order to maintain an adequate flow of supplies. Some of them make forward sales contracts on their products. It is of supreme importance to them that we be in a position to give them some assurance that the landed cost of materials will remain constant for a reasonable period of time at the lowest level of rates consistent with service. To do this, it is necessary to have stability of rates. Conference contract dual rate systems have provided this reasonable forward assurance of rate stability. Furthermore, they insure us of regular and frequent sailings, enabling orderly scheduling of production and shipment of orders at the times required by buyers. It is only in this way that we can give buyers the service that is necessary for orderly planning, production, and merchandising.

While the conference contract systems do allow rates to be increased generally on 2 months' notice, the effect in actual practice is that we can plan forward for a much longer period than this. History has shown that without some such system, chaotic rate wars have resulted and have led to conditions under which buyers would hardly know from one day to the next what their supplies would cost them. Obviously, under such conditions, they would be loath to buy very far ahead, which would make our mining, production, selling, and planning extremely difficult, leading probably to peaks and valleys; and would also cause them to look to alternate sources of supply and possibly competitive materials from other countries.

The recent decision of the Supreme Court in the Japan-Atlantic case places the present conference contract dual-rate systems and the stability we and our buyers have enjoyed in serious jeopardy, and we feel that it is essential that there be temporary legislation to maintain the status quo while Congress through your committee makes a further and more complete investigation aimed at long range legislation. This subject was explored fully by the Alexander committee some 40 years ago as a forerunner to the Shipping Act of 1916. The record there is replete with examples of chaotic conditions when there was unrestrained carrier competition. It also uncovered and specifically condemned numerous abuses by carriers and conferences. The contract system existing in the intervening period has provided necessary stability under which the foreign trade of the United States has thrived; but in view of recent litigation and possibly changed conditions, we feel that the public interest would be well served by another full-scale review.

We consider prompt action to be essential and that the bill, designated H. R. 12751, submitted by the honorable chairman, in principle accomplishes the immediate stopgap objective. We do think, however, that the bill should be amended by revising the definition of "dual rate contract arrangement" by inserting after the word "practice" the clause "approved by the regulatory body administering this act." We deem this appropriate in order to confine the stopgap approval to dual rate contract arrangements that have undergone the surveillance and met with the approval of the Federal Maritime Board.

In essence, therefore, we consider this bill appropriate and necessary. We fully support the principle behind it. Speed is of the essence and we strongly

urge your honorable committee to report favorably to Congress and urge enactment at this session.

In conclusion, I wish to thank the chairman and members of your committee for the quick work in considering such legislation, and for the opportunity of appearing before you and stating our position.

WASHINGTON, D. C., June 5, 1958.

HON. HERBERT BONNER,

*Chairman, House Merchant Marine Committee,
Old House Office Building, Washington, D. C.:*

In the interest of conserving the committee's time I filed this morning for the record my statement on H. R. 12751, without taking time to read it. This statement supports interim legislation as outlined therein. The following would have been read into the record had time permitted, and since I cannot be in Washington Friday I would like to have this considered in the record as a supplement to my statement.

I understand there has been some question as to whether shippers were fearful of retaliation if they took action against carriers or conferences when some individual circumstance warranted. I would like to say that some years ago we were the prime movers in a complaint before the Federal Maritime Board against all conferences on the Pacific Coast, in connection with handling charges, and that we have suffered no reprisals either spacewise or ratewise. In fact, I have just now been informed that one of the conferences today took favorable action on our request for a rate reduction necessary to meet present conditions of the trade. I will be glad to appear again when further hearings are called to study long-range legislation.

T. R. STETSON,
*Manager, Export Sales Dept. Pacific Coast,
Borax Co., Division U. S. Borax & Chemical Corp.*

The CHAIRMAN. Mr. Staley of the Quaker Oats Co.
(Statement follows:)

THE QUAKER OATS CO.,
Chicago, Ill., June 6, 1958.

HON. H. C. BONNER,

*Chairman, House Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.*

DEAR MR. BONNER: I have followed with much interest developments since the recent decision of the Supreme Court in the matter of dual ocean rates. The matter is of great interest to this company and it is a subject of regret that I could not personally appear in support of H. R. 12751, which is an attempt to deal with the problem at least on a temporary basis.

Our company is not the largest exporter in terms of tonnage or dollars, but there are very few companies in this country which have a greater number of individual shipments to a greater number of international destinations, particularly to Latin America and the Far East.

We have operations in and exportations from many States; we are presently constructing a mill in your great State of North Carolina.

We are believers in competition, but we believe in orderly competition and in orderly ratemaking procedures.

We have gone all through this business of competitive and orderly rate procedures in the making of freight rates by rail, by highway, and by international water service. It would be most unfortunate and hurtful not only to this company but surely to industry in general if the established orderly procedures are summarily dismissed.

The purpose of this letter is to register with you, and I hope it may be a matter of record, the interest of this company in fair and businesslike procedures in the matter of ocean rates.

I would like the record to show the firm support of this company in the interest of sound, progressive, orderly and yet, with due recognition to competition, practical ratemaking procedures.

We are currently studying the possible location of a new operation at which export freight would originate in Washington, and I am taking the liberty of

sending a copy of this letter to the Honorable Mr. Magnuson and appealing to him for thoughtful consideration of this bill when it comes before the Senate.

I hope you will not take it remiss if a copy of this letter also reaches the Honorable Messrs. Dirksen and Douglas of Illinois, as well as my own good friend, Congressman Sidney R. Yates of the 9th District of Illinois.

If it would help the good cause, I would be happy to have our local managers and executive representatives at our plants, scattered around the country, producing freight for export, address their respective Senators and Representatives, pleading for their support.

Your constructive interest in this subject is appreciated by the shipping public.

Sincerely,

J. R. STALEY, *Vice President.*

Mr. Stein of Stein, Hall & Co.

STATEMENT OF ROBERT M. STEIN, VICE PRESIDENT, STEIN, HALL & CO., INC., NEW YORK, N. Y.

Mr. STEIN. We are mostly importers. I have a prepared statement that I will be glad to submit in favor of this pending legislation.

The CHAIRMAN. You favor this resolution H. R. 12751?

Mr. STEIN. Very definitely.

The CHAIRMAN. Do you endorse the statements that have been heretofore made with respect to the necessity of this resolution?

Mr. STEIN. Yes, sir. I think it is very important from a stopgap point of view to have this legislation until the whole thing can be studied further.

My name is Robert M. Stein and I am vice president of Stein, Hall & Co., Inc., New York City, importers and exporters of upward of 50 years. We handle, in the main, imported raw materials and semi-processed products such as burlap, tea, coffee, fibers, tapioca, flour, et cetera.

I am appearing here in support of H. R. 12751, the bill introduced by Representative Bonner to amend section 14 of the Shipping Act of 1916 to clarify and affirm the legality of the dual rate contract arrangements now in effect, until June 30, 1960.

As merchants, regularly and adequacy of ocean freight services are of prime importance to us, coupled with stability and uniformity of ocean freight rates. Our sales of imported materials in this country and our exports to foreign markets would be seriously curtailed if the foregoing conditions with respect to ocean transportation do not exist. We believe that the vast majority of foreign traders would agree with us that this position cannot be maintained without congressional sanction of the dual rate contract arrangement as is proposed by H. R. 12751. We ourselves have been signatories to many conference contracts because they gave us the assurance of adequate service at stable rates.

We, therefore, urge the passage of the bill as a temporary measure in the hope that by the expiration date of June 30, 1960, a permanent law on the subject can be drafted.

The CHAIRMAN. Mr. James, are you present?

Mr. JAMES (Leonard James, representing various west coast conferences). Yes, sir.

The CHAIRMAN. Do you desire to file a statement this morning or would you rather be heard tomorrow?

Mr. JAMES. I do not have a prepared statement. I would appreciate a few minutes.

The CHAIRMAN. You may be heard tomorrow, then.

Mr. JAMES. Thank you.

Mr. TRIGGS (Mathew L. Triggs, American Farm Bureau Federation). I feel very much in the minority but I would like to make a statement.

The CHAIRMAN. Mr. Triggs, the bells have rung, as you understand. I will hear you tomorrow.

The committee will stand adjourned until tomorrow morning at 10 o'clock. Then we will get through with the subject.

(Whereupon, at 11:05 a. m., the hearing was adjourned until 10 a. m., Friday, June 6, 1958.)

TO AMEND THE SHIPPING ACT, 1916

FRIDAY, JUNE 6, 1958

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D. C.

The committee met at 10 a. m., pursuant to recess, in room 219, Old House Office Building, Hon. Herbert C. Bonner (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We will place in the record at this point telegrams received in support of this resolution from Berry & McCarthy Shipping Co., San Francisco, Calif.; De Sola Bros., Inc., New York; D. D. Tipton, vice president, Traffic, Chromium Mining & Smelting Corp., Riverdale, Ill.; J. B. Lowe, general traffic manager, Combustion Engineering, Inc., New York, N. Y.; and Ocean Traffic Committee, National Association of Waste Material Dealers, Inc., New York, N. Y.

(The telegrams referred to follow:)

NEW YORK, N. Y., June 5, 1958.

HON. HERBERT C. BONNER,
*Chairman, House Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.:*

We vigorously support interim legislation introduced House and Senate to maintain status quo dual rate systems until June 30, 1960. Maintenance of erection or assembly schedule of our industrial boilers depended upon frequency of steamer sailings under uniform basis of charges.

J. B. LOWE,
General Traffic Manager, Combustion Engineering, Inc.

NEW YORK, N. Y., June 5, 1958.

HON. HERBERT C. BONNER,
*Chairman, House Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.:*

We heartily support interim legislation introduced to maintain status quo dual rates systems until June 30, 1960.

OCEAN TRAFFIC COMMITTEE,
National Association of Waste Material Dealers, Inc.

SAN FRANCISCO, CALIF., June 5, 1958.

HON. HERBERT C. BONNER,
*Chairman, House Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.:*

We strongly support legislation to legalize the dual-rate system and urge enactment as proposed in H. R. 12748, 12751, and 12758. As ocean freight brokers and forwarders during the past 40 years we believe the dual-rate system of the several Pacific coast conferences has proven to be beneficial to large and small shippers and permits stability in rates and steamer services.

BERRY & MCCARTHY SHIPPING CO.

NEW YORK, N. Y., June 5, 1958.

Congressman HERBERT C. BONNER,

*Chairman of the House Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.:*

Understand your committee conducting hearings on legislation regarding ocean freight dual rates therefore we wish express our opinion stabilized rates essential for orderly export procedure. During our 87-year-old history as exporters, have found conference dual rate more efficient than varying market rates provided carriers. Basic rates fair and fairly administered.

DE SOLA BROS. INC.

RIVERDALE, ILL., June 5, 1958.

HON. HERBERT C. BONNER,

*Chairman, Standing Merchant Marine and Fisheries Committee,
Old House Office Building, Washington, D. C.:*

Respectfully ask that you do all possible in your committee to extend legislation enabling dual-rate system until year 1960, thus permitting full investigation during interim. Believe facts will reveal no hardship involved to either carriers or shippers and present system fair and equitable to all.

Yours very truly,

D. D. TIPTON,

Vice President, Traffic, Chromium Mining & Smelting Corp.

The CHAIRMAN. At this point in the record we also have a statement by Mr. Sam Nickey, Jr., of Nickey Bros., Inc.

(The statement referred to follows:)

STATEMENT OF SAM NICKEY, JR., NICKEY BROS., INC., IN SUPPORT OF
H. R. 12751

My name is Sam Nickey, Jr., of Nickey Bros, Inc., Memphis, Tenn. We are manufacturers of hardwood products such as lumber, plywood, and flooring. We import over half of our raw material from Africa and South America, but principally from the Far East. We have both a domestic market and an export market for our products, exporting to the Continent, Mediterranean, and South Africa.

I am in strong favor of the bill before this committee to temporarily legalize the dual-rate system because this system provides stability in rates which is essential to my business. Transportation costs are from 30 to over 50 percent of the cost of our raw material. Ours is an intensely competitive business and violent fluctuation in freight rates which would naturally result from the elimination of the dual-rate system would make orderly marketing impossible.

I have had the privilege of listening through a major portion of the hearings on this bill and have heard references by members of the committee to the absence of shipper witnesses that would oppose the bill. The statement was made that no shippers can publicly oppose the bill for fear of retribution or reprisals by conference members. I wish emphatically to dispute this, as in my case I have even filed a formal complaint with the Federal Maritime Board regarding the measure of a rate and have had no retaliation or threat of retaliation from any conference member. I am not as large as many that have appeared before this committee; nevertheless, my company imports approximately 30 percent of all Philippine mahogany logs moving in the trade between the Philippines and United States ports.

Again I wish to urge the favorable consideration of this bill by the committee.

The CHAIRMAN. Mr. Matthew L. Triggs, of the American Farm Bureau Federation.

STATEMENT OF MATTHEW L. TRIGGS, ASSISTANT LEGISLATIVE
DIRECTOR, AMERICAN FARM BUREAU FEDERATION

The CHAIRMAN. Please give your name and background for the record.

Mr. TRIGGS. Thank you, Mr. Chairman and members of the committee. My name is Matthew L. Triggs and I am assistant legislative director of the American Farm Bureau Federation.

We have submitted a statement which is being distributed.

The chairman has requested that witnesses avoid dealing with the broad issue.

The CHAIRMAN. I am going to let you deal a while with whatever you want to deal with.

Mr. TRIGGS. I appreciate that, Mr. Chairman, but I have rearranged my presentation to deal with the narrower issue which you have indicated as desirable, namely, should the legality of the dual-rate system be affirmed temporarily in order to permit the committee to have an opportunity to make a thorough study of this matter at a later date?

Since our statement deals in large part with the broad issue, with your approval, I would like to file our statement for the record and address a few comments to the narrower issue, the temporary extension of the legality of the dual-rate system.

First, I think that I have to answer a question that I am sure is in your minds. Why is an agricultural organization interested in this issue? Last year the output of 60 million acres of land, 1 out of 5, was supported.

Farmers do not ordinarily ship themselves but they have an interest in ocean freight transportation because all costs between the farmer and the ultimate consumer are shared by the farmer and the ultimate consumer. We are, therefore, interested in keeping ocean freight rate at the lowest economical level and believe that an element of competition in the ocean shipping business is a healthy factor in avoiding abuse of ratemaking authority by ocean conferences.

A more specific answer as to why I am here today is that the voting delegates of our member State farm bureaus have established a policy that "the authority of shipping conferences to establish discriminatory ocean freight rates should be terminated."

This policy is founded upon a more basic principle that free, vigorous competition is a fundamentally sound and desirable concept and that we should avoid restrictive controls and practices that we conceive to be a part of the Old World economic philosophy.

The CHAIRMAN. Are you reading from that statement?

Mr. TRIGGS. No, sir; although there are certain sentences that are somewhat similar.

The CHAIRMAN. We will place the statement in the record at this point.

(The statement referred to follows:)

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION RE DUAL RATE AGREEMENTS OF OCEAN SHIPPING CONFERENCES, SUBMITTED BY MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR

The opportunity is appreciated of presenting the views of the American Farm Bureau Federation with respect to the problem created by Supreme Court invalidation of dual-rate provisions of contracts offered to shippers by ocean transportation conferences.

Farmers have a major interest in ocean transportation. In 1957 the output of 60 million acres (1 out of every 5 acres of cropland) was exported. Adequate shipping service at the lowest economic rates is an important factor in maintaining exports of farm products at the highest feasible level, meeting competition of exporters of other countries, and to return the maximum feasible percentage of world market prices to farmers. Although farmers themselves rarely engage in export sales, farm people do pay indirectly a substantial part of the costs of ocean transportation of farm products. The size of the annual bill paid by farmers for ocean freight is of major proportions and warrants their interest in the subject of this hearing.

The policy of the American Farm Bureau Federation on this issue, as approved by the voting delegates of the member State farm bureaus, is as follows: "The authority of shipping conferences to establish discriminatory ocean freight rates should be terminated."

The obvious purpose, or at least the obvious effect, of the dual-rate contracts entered into by many ocean shipping conferences, is to minimize rate competition. To the extent that conferences, by exclusive contracts with shippers, are able to freeze out independent companies or force them to join with, and adhere to, conference rates and contracts, rate competition will be ended.

Such action in effect turns over to an international cartel monopoly the power to fix ocean transportation rates.

It is our conviction and one in which we are confident almost all Congressmen share, that free vigorous competition is the distinctive feature of the American economic system and a major factor which has made the United States the tremendous productive factor it represents in world affairs.

Our national belief in the principle of competition is reflected in antitrust legislation designed to prevent business concerns from conspiring to fix prices or otherwise regulate competition.

Under this concept American industry has grown strong and vital, capable of expanding in any direction to meet the needs of the people and of the Nation.

A contrary philosophy has prevailed in most other countries. The competitive principle is not similarly cherished by business and government. Arrangements of a restrictive nature between business concerns in the same or related industries, often promoted or participated in, or at least countenanced by government, are common.

These cartel activities, usually carried out by trade associations, have as their major purpose, the fixing of prices and the reduction of competition throughout entire industries.

By reducing the incentive for increased efficiency and curtailing the opportunity of individual concerns, cartels have been a significant factor in Europe's lag in productivity. In a number of instances, however, notably German, substantial progress has been made in recent years toward removing the shackles which cartel agreements have placed upon the capacity of the economy.

The dual rate system is an intrusion of this old world economic philosophy into the international shipping business. It is part and parcel of the guild-cartel philosophy that competition is something to be avoided. It promotes discrimination among shippers as a vehicle to curtail competition.

The incompatibility of the dual rate system with our economic philosophy may be illustrated by the fact that if a similar practice were followed by the railroads in the United States, or by a manufacturer, they would be subject to severe penalties imposed by law.

The Shipping Act of 1916 specifically prohibits rebates to shippers by ocean transportation companies. Yet the same result is accomplished by the dual rate system.

We have no doubt that shipping industry representatives will declare that the Supreme Court decision outlawing dual rate systems will result in chaos. This is the usual reaction of business people faced with the loss of the protective

umbrella of cartel restrictions. Every proposal to liberalize the restrictive cartel systems of Europe has been met with business opposition and predictions of disaster. These prophecies of chaos have not come true. As the German Minister of Economics, Ludwig Erhard, recently asked a meeting of German businessmen: "During the past 5 years we have demonstrated what competition and free prices can do. Why do you want to go back to regulations and restrictions?"

We have no doubt that representatives of the shipping industry will say that water transportation is different—and will tell you in lengthy detail why competition won't work in this industry. This assertion that their industry is different and the usual laws of economics won't work out the same, is the normal reaction of any industry, but the validity of the argument is challenged by the fact that the unregulated (95 percent unregulated) United States inland waterway transportation industry is not subject to rate regulation and is doing very well.

It will no doubt be argued that American shipping costs are higher and that the domestic industry cannot survive in an unregulated market. If this is still so, despite the subsidies the industry receives, the preservation of discriminatory cartel rate agreements is still not the answer. If the cost to a domestic company for shipping an article from A to B is \$1 and the cost to a foreign company is 75 cents, and the rate is fixed at \$1.05 to provide a profit to the domestic company, this will operate to attract capital into the lucrative foreign business until all concerns are operating at partial capacity—at which level of operations the \$1.05 rate will not be a profitable rate. The long-run interest of domestic lines is not furthered by rate regulation that creates an incentive for competitors to enlarge their businesses.

It should also be noted that dual-rate provisions are not an essential part of any ocean conference agreement. Many conference agreements do not contain dual-rate provisions. Where they exist, the invalidation thereof does not destroy the conference or its legitimate functions—all that such invalidation does is to cause modification of the discriminatory and unlawful dual-rate contracts. Nor have all shippers signed such contracts. We submit that any argument that the Supreme Court decision will create a chaotic situation is an overstatement.

The Supreme Court found that the intention of the Shipping Act of 1916 was to permit regulation of competition among themselves of concerns who wished to voluntarily join a conference—but that it was never the intention of the act that the conferences would have authority to undertake practices, "which have the purpose and effect of stifling the competition of independent carriers." We believe this is a correct interpretation of the act and that those who proceeded otherwise have had adequate notice over the years that the dual-rate system was unlawful.

Thank you for this opportunity to represent the interest of farmers in this issue.

Mr. TRIGGS. Part and parcel of the guild-cartel philosophy, so common in other countries, is that competition is something to be feared and avoided.

We have heard some of the shipping industry representatives say here that the Supreme Court decision outlawing dual-rate systems will result in chaos. Certainly that is the expected and normal reaction of business people in any line of business faced with the loss of the umbrella of cartel protection. It is instructive, I think, to note that all proposals to liberalize the restrictive cartel systems of Europe have been met with the strongest possible business opposition and predictions of chaos and disaster. Yet, Germany, the country that has done most to eliminate cartel and state restrictions of business and has gone furthest toward restoration of a comparatively free price and market system, has made the most economic progress of any country in Europe since the end of the war.

At a recent meeting of German businessmen, the German Minister of Economics, Ludwig Erhardt, asked them: "During the past 5

years we have demonstrated what competition and free prices can do. Why do you want to go back to regulations and restrictions?"

The assertion of the shipping industry that chaos will result if they do not have authority to use dual-rate systems would seem to be challenged by the fact that our inland waterway transportation system, only 5 percent of which has regulated rates, which is otherwise not subject to internal or external rate regulations, prefers it this way, strongly opposes regulatory measures and is doing all right.

A few independent ocean operators, the ones that are still around, tend to provide competition to conference rates and to prevent the abuse of monopoly rate fixing authority.

If Congress were to put its stamp of authority on the dual-rate system for another 2 years, this would probably be long enough to significantly weaken this competitive force in the industry. These individuals serve a useful economic purpose in keeping conference rates in line.

The immunity from an antitrust action which has been extended to ocean shipping conferences is broad. They are permitted to fix rates and allocate services among conference members but in our view it would be an extraordinary extension of law also to give them authority to destroy competitors by exclusive contracts carrying discriminatory rate provisions.

We believe this is harmful and unwise, whether for 1 year or for 10 years. The incompatibility of this proposal with the American economic philosophy is indicated by the fact that any group of manufacturers who instituted such price discrimination would be subject to severe penalties.

The provision in the Shipping Act of 1916 prohibiting rebates was for the purpose of preventing predatory action against independent carriers.

In the words of the Supreme Court decision, it was never the intention of the act to authorize practices which have the purpose and effect of stifling the competition of independent carriers.

I think in this instance the carriers can hardly complain of lack of notice or any surprise with respect to what has happened.

The Justice Department, which is our litigating agency and generally the best source of legal opinion, has maintained that dual-rate contracts are illegal for at least 10 years.

The circuit court held unanimously, I believe it was more than 2 years ago, that such contracts were illegal.

If legislation to legalize dual-rate contracts is not approved, the conferences will continue as they have in the past. They will continue to set conference rates. The only difference is that the competitive ability of independents to keep such conference rates in line will be enhanced. It will be a more competitive situation, yes, but it will not destroy the conference arrangement.

We doubt, frankly, that the industry can demonstrate that it cannot stand a little competition.

It would probably be desirable that this committee make a careful study of this question in the next Congress.

In the meantime, it would be most helpful in the consideration of the long-run issue to find out by experience whether or not this

industry can live and prosper in a somewhat more competitive environment.

Just what, if any, real adverse consequences will flow from the increased measure of competition that would exist if this legislation were not approved? Competition, of course, may be a tough task-master and people do not like it if they can avoid it. But we submit, as a basic proposition, that competition is the heart and core of the successful American economic system.

Thank you, Mr. Chairman.

Mr. ALLEN. Mr. Chairman. Mr. Triggs, when Mr. Labagh was testifying, he gave some indication that the California Cannery Association and the Dried Fruit Packers Association were actually representing the farmers insofar as the export carriage of their products was concerned and indicated that a fairly substantial part of the California farm produce went through those hands.

Mr. TRIGGS. Yes, sir.

Mr. ALLEN. That leads me to ask in connection with your statement that 1 out of every 5 acres of farm produce is exported, just who is responsible for the export carriage?

Does the Farm Bureau have any direct interest?

Mr. TRIGGS. We are not engaged in any commercial activity.

Mr. ALLEN. That is between the canners of the State and the Farm Bureau, who would have the most to do with the carriage of exporting commerce.

Mr. TRIGGS. Farm Bureau would not be involved in actual shipment of the export commodities.

Mr. ALLEN. Is that sort of a criterion of judging whether your views or Mr. Labagh's views should be controlling?

Mr. TRIGGS. It could be, Mr. Allen. We have always noted a phenomena in dealing with surface transportation matters and that is that shipping managers, traffic managers, sales people, commonly prefer a stable rate system whereas when the issue is developed by the real policymaking people in the organization, they find that there are some advantages to a competitive situation as well. It obviously makes a traffic manager's job easier if he doesn't have to fight for the lowest possible rates but just accepts the rates of the regulated form of transportation.

I do not know how thoroughly the views that have been represented here by the canners and dried-fruit packers represent the views of their own organization, but they do not represent the farmers in this connection.

Mr. ALLEN. Do you have any idea of how much of the farm produce goes into the hands of packers and canners through the type of person who processes farm products before export?

Mr. TRIGGS. Of course, canned fruit is not one of the big export items of American farm products. It is a substantial one. The big ones are cotton and wheat and tobacco, rice and a few others.

Mr. ALLEN. With regard to cotton, as an example, how do you reconcile your views with the views of the gentleman who came down here on behalf of the cotton shippers?

Mr. TRIGGS. I don't reconcile them. I haven't tried to. I didn't hear his testimony. And in any event we have tried to present what

seems to us to be the kind of thinking that would be of interest to the committee in this connection.

Mr. ALLEN. Who exports the wheat? Is it mostly handled through the Government programs of surplus disposal or is it through the farmers that you represent?

Mr. TRIGGS. Actually the Government is an important factor in the wheat export business, but the majority of tonnage is exported by private shippers. Ordinary business concerns in their own right. There are, of course, some fairly large and substantial agricultural cooperatives in the export business.

Mr. ALLEN. Do these people who actually do the exporting, the shippers and the cooperatives, share your views or do they share the views of the cotton shippers?

Mr. TRIGGS. I don't know, Mr. Allen. I wonder how thoroughly this whole question has been considered by some of the people who have indicated to you a position. The day before yesterday our California Farm Bureau office called to say that a committee of ocean shipping companies had called on their office to solicit their support of this measure and had advised them, and so reported to me, that the American Farm Bureau Federation was for the measure, and wouldn't we support the American Farm Bureau with a telegram to the committee.

This was somewhat surprising to them so they called us to find out what the situation was and, of course, we put them straight.

So I just wonder how much of the interest that has been generated in this issue is really an informed interest or merely an interest that has been sponsored by the very vigorous, and properly so, business organizations representing ocean shippers. You understand, I don't object to this. They have a right to do so.

The CHAIRMAN. Let me interrupt you. You have been here throughout the hearings, haven't you?

Mr. TRIGGS. I was here yesterday.

Mr. ALLEN. Did you hear me ask these people who testified here whether they spoke for the organization and with approval of the organization?

Mr. TRIGGS. I believe I did hear you ask several of the witnesses that question, sir.

The CHAIRMAN. You then are questioning their veracity?

Mr. TRIGGS. No, sir, I am just questioning the extent to which this issue has been considered by shippers interests. It's interesting to note that the United States Chamber of Commerce, the National Association of Manufacturers, others of the major broad general business interests that normally could be expected to support a business viewpoint, are not represented here.

I don't see how they could be in view of some of their general policies, but at least they are not representing the industry on this question.

The CHAIRMAN. We haven't had the United States Chamber of Commerce here.

Mr. TRIGGS. That is what I was pointing out.

The CHAIRMAN. And of course in answer to your question there you represent the management of this Farm Bureau organization, not the individual farmer himself at all, do you?

Mr. TRIGGS. No, our policies are determined by our farm membership.

The CHAIRMAN. Go ahead. Mr. Allen.

Mr. PELLY. Would the chairman yield?

The CHAIRMAN. Yes.

Mr. PELLY. As I understand the Chamber of Commerce of the United States is made up of hundreds of members all over the country. In order to establish a policy it is necessary for them to send out and ascertain the views of their membership before they announce policy. They could never have had time to come before this committee with a policy since the Supreme Court came up with this decision.

The CHAIRMAN. The chamber of commerce hasn't been here.

Mr. PELLY. They couldn't have a policy. The witness has just stated that we can infer because they are not here that they are against this legislation. I think to the contrary they could not be here.

Mr. TRIGGS. May I make this comment, sir?

We are not appearing here in opposition of the conference methods of fixing ocean rates either. We are appearing here only to recommend that you permit an element of competition to continue within this regulatory system.

The CHAIRMAN. All right. Mr. Allen.

Mr. ALLEN. Just to keep the record straight to a little further degree in view of the statement you made as to where we get our information, I would like you to know that as far as I am concerned, with the exception of the prima facie showing that was made by 1 or 2 members of the shipping associations which led to the introduction of the bill, and with the showing that seemed to indicate that the matter needed an immediate consideration and hearing, the information I received comes from the witness table at which you are sitting across this desk.

Mr. TRIGGS. Thank you, sir.

Mr. ALLEN. Now getting back to the minor question I was pursuing: Who handles the shipment of rice?

Mr. TRIGGS. Well, there are a number of substantial cooperatives in the rice export business. I would guess that in the neighborhood of 60 percent of the rice exports in this country are handled by cooperatives.

Mr. ALLEN. Do their views coincide with yours or do they coincide with cotton shippers?

Mr. TRIGGS. I don't know, sir. I doubt that they have considered the question.

Mr. ALLEN. Mr. Hudtloff seemed to indicate that his views as handling shipments for the Department of Agriculture were somewhat in line with the cotton shippers association. I am getting at what is left for you to represent.

Mr. TRIGGS. Mr. Hudtloff of the Department of Agriculture?

Mr. ALLEN. Yes. I think he is with the shipping department of the agency within Agriculture that ships all the overseas cargo.

Mr. TRIGGS. No question that the Department of Agriculture has been very active in the cases over the years, opposing the dual-rate system, as has been the Department of Justice. Although they have not testified as to policy here, perhaps the committee would like to hear from these Departments.

Mr. ALLEN. It is a matter of some regret that they are just as active in not coming down here in order to present the views that are supposed to be theirs. It is a little bit difficult to understand why the man that does the work for them does it according to one set of policies and they on higher levels express a contrary view. At least that is the way it seems to be at the moment. Would you advocate a similar type of competition in the domestic carriage of freight?

Mr. TRIGGS. We have a similar type of competition in the domestic carriage of freight. There is no rate regulation of the major portion of inland waterway transportation.

Mr. ALLEN. How about the major portion of inland nonwater transportation?

Mr. TRIGGS. In the case of the railroads I think that there is quite a comparison between railroad transportation and ocean transportation. In both instances the industry sets the rate subject to the approval of the Interstate Commerce Commission in the case of the railroads and of the Maritime Board on the case of ocean transportation. I think the ICC control is tighter and closer but that is not important.

At one time the railroads were engaged in the exact type of rate discriminatory practices that was outlawed by the Supreme Court decision. The Congress enacted the Interstate Commerce Act. One of the major purposes of this act was to prevent discrimination among shippers so that at the present time any railroad that asked for authority to enter into exclusive rate reduction contracts with particular shippers as a means of fighting truck competition or as a means of driving a certain truckline out of business would be denied authority to do this under the Interstate Commerce Act, and if they did do it without authorization would be subject to severe penalties.

Mr. ALLEN. You would not be for any system of relieving any railroad or any common carrier out from under the regulation of the Interstate Commerce Commission, would you?

Mr. TRIGGS. No, sir, we haven't recommended that nor have we recommended any modification of the ocean conference set up.

Mr. ALLEN. I am getting more at this philosophy that expresses open competition. It seems to me that with regard to farm prices generally we have gone quite a ways to stabilize prices in the face of potential competition.

Do you advocate any philosophy that would apply to the farm products, the open competition that you would like on ocean rates?

Mr. TRIGGS. You have opened quite another barrel of fish, Mr. Allen. If I had 20 minutes I would welcome the opportunity to endeavor to explain why, in our opinion at least, the very generous assistance that Congress has provided to agriculture which was intended to improve farm income has boomeranged, that it has operated to reduce farm income. I should not put a lot of this in the record, but just in a nutshell to state our belief that there isn't anything very much wrong with agriculture that a little less government wouldn't cure.

Mr. ALLEN. Have you always been for that as an organization?

Mr. TRIGGS. We are more of that mind today, sir. There have been times in the past when we as an organization supported more Government assistance at a much lower level than anybody is talking about today to be sure?

Mr. ALLEN. Thank you, Mr. Chairman.

Mr. YOUNG. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Van Pelt?

Mr. VAN PELT. I would like a little clarification on dual system as far as the individual farmers' incomes might be concerned and I ask that because of the testimony of the gentleman from the Department of Agriculture who was handling commodities under 4-A and seemed to express at least to me that the present system was working out to the advantage of the Department and perhaps reflecting injury to the farmers' income.

Also in response to a question from one of the gentlemen from the Gulf as to the independent shippers of farm commodities, that they had expressed no objection to it.

Mr. TRIGGS. Mr. Congressman, we are not here to oppose the regulatory pattern that represents an exemption from antitrust law that is used in ocean transportation business.

We are here only to oppose the idea that the exemption includes or should include any authorization to engage in a discriminatory rate practice, or designed to force independent competitors out of business. Our reason for that policy, we believe that it is in the interest of farmers to have an element of competition within this regulatory system. We are not opposing the whole regulatory system at all.

Mr. VAN PELT. That's all.

Mr. RAY. Mr. Chairman.

The CHAIRMAN. Mr. Ray.

Mr. RAY. Mr. Triggs, are you familiar with the way the different conferences have worked comparing, for example, the conferences that do not have the dual-rate provisions in them and the conferences that do?

Mr. TRIGGS. I would certainly not be a competent witness on that question, Congressman. I do understand that the majority of the conferences do not have or use the dual-rate system. I expect that they are the less important shipping movements.

Mr. RAY. The reason, of course, I am interested in pointing it up is what has been the effect on competition from independents in the one situation in contrast to the other.

Mr. TRIGGS. That is an awfully good question, Congressman. I wish I knew a better answer than I do. Apparently some movements have been able to survive with the competitive element that is represented by the comparative freedom of the independents to engage in business in those movements. But you are asking an important key question that I wish I could answer.

Mr. RAY. That is all.

Are we going to get a witness from the industry?

The CHAIRMAN. The Department of Agriculture.

Mr. RAY. I think this question goes to the question of the experience within industry.

The CHAIRMAN. For your information I have tried to get the Department of Agriculture over here. I got a message back that they have got to have a conference next week before they can determine their position.

Mr. RAY. I think we ought to have in the record, Mr. Chairman, what their position is.

The CHAIRMAN. Mr. Cowen.

Mr. COWEN. I requested at Mr. Bonner's request that Agriculture send a man this morning from the legal staff who could explain their stand on the recent Supreme Court decision against Colonel Hudloff's position.

The CHAIRMAN. What did they say?

Mr. COWEN. They would try to have someone here this morning.

Mr. BUCY. Mr. Chairman, in answer to that request, I am here at the request of the Department. I am Charles W. Bucy, the Assistant General Counsel.

The CHAIRMAN. Let the record show that the Department said they wanted to have a conference and would send me a letter instead of sending somebody over here.

Mr. RAY. This ought to go in the record sometime. If the Department sends you a letter, there is not any point in confusing the record.

The CHAIRMAN. I have no assurance that I will ever get the letter.

Mr. RAY. Let me read what the brief of the Department of Adjustment and the Department of Agriculture had to say on the subject. I am reading from page 8 of the brief filed by the two departments in the Supreme Court case.

The Secretary of Agriculture intervened before the board to represent agriculture interest in obtaining equitable transportation rates and service for shipments of agricultural products and to represent the Department of Agriculture's interest as one of the largest agricultural shippers in the world.

Under section 203J of the Agricultural Marketing Act of 1946, the Secretary is authorized and directed to assist in obtaining equitable and reasonable transportation rates and services for agricultural products by making complaints to the Federal Maritime Board and to other Federal and State transportation regulatory bodies.

Also section 201 of the Agricultural Adjustment Act of 1938 (a) (b) which authorizes the Secretary to participate in rate proceedings before the Interstate Commerce Commission relating to the transportation of farm products.

The Department of Agriculture owns large quantities of farm products, substantial parts of which have been and will continue to be exported via ocean-going vessels.

The Secretary has also intervened in a number of other board proceedings in which the validity of dual-rate systems has been challenged. The Secretary's interest is primarily in the legality of the dual-rate system and its interference with the free flow of agricultural exports. The total value of the United States agricultural exports for the 12 months beginning July 1, 1955, was \$3,419,000,000.

That represents an inconsistency that ought to be cleared up in our record.

The CHAIRMAN. Yes. Are you finished?

Mr. RAY. I have finished.

The CHAIRMAN. Mr. Mailliard.

Mr. MAILLIARD. Mr. Chairman, in your statement you describe the policy of the Farm Bureau Federation on this issue. You do not tell us when or how that policy was established.

Mr. TRIGGS. I will be very happy to do so, sir.

In connection with one of these cases that was heard before the Maritime Board, our attention was called to the fact that agriculture might have an interest in the matter. We endeavored to analyze the issue, staffwise, for the consideration of our board of directors.

Our board of directors did consider the matter in considerable detail. They directed the staff to participate as a witness, as we did in the case that was heard by the Maritime Board.

Following this action, as is our customary practice, at the next annual meeting the actions the board of directors had taken in the interim since our last annual meeting were presented to our house of delegates, and they endorsed this policy, and it was incorporated in the policies of the organization.

Mr. MAILLIARD. What year was that?

Mr. TRIGGS. 1953 or 1954. I am sure it was one of those 2 years.

Mr. MAILLIARD. So this is a general policy that might be comparable to a general policy that the National Association of Manufacturers or the United States Chamber of Commerce or any other group would have. Properly ratified and everything else it is not specific to this issue.

Mr. TRIGGS. Well, I think it is because that policy does not deal with the whole question of ocean shipping conferences. It just says: "The authority of shipping conferences to establish discriminatory ocean freight rates."

Mr. MAILLIARD. I do not think any of us would disagree that there should not be discriminatory ocean freight rates, but I think one of the questions we have got before us is, Is this practice discriminatory, or isn't it?

Mr. TRIGGS. I expect it is. We always assume that it is a discriminatory practice.

Mr. MAILLIARD. You have assumed, but do you know? Have you ever really studied it?

Mr. TRIGGS. If you have one rate that is offered to one shipper and another rate that is offered to another shipper, if he will give you an exclusive contract, this would be, in our view, discriminatory rates. It would be under the railroad legislation, it would be specifically prohibited as a discriminatory rate.

Mr. MAILLIARD. Is that of giving one rate on one lot and another rate on a smaller lot? Isn't that also discriminatory in a similar way?

Mr. TRIGGS. I would not classify it as such. But I suppose that is a question of semantics.

Mr. MAILLIARD. I am not trying to engage in an argument in semantics. I am trying to get at what the testimony has developed here.

For example, it has been testified to that a good part of your agriculture products go as bulk cargo.

Mr. TRIGGS. Yes, sir.

Mr. MAILLIARD. In almost every case those were open rates.

Mr. TRIGGS. Yes, sir, and may I comment on this that this again illustrates, I think, the fact that the conferences can operate successfully without a dual-rate system inasmuch as much of their traffic is not handled under the dual rate system.

Mr. MAILLIARD. That is correct, but then there are reasons why some parts of their traffic are under the dual-rate system.

Mr. TRIGGS. Yes.

Mr. MAILLIARD. And in general, American agriculture is getting the benefit of a lower rate under the dual-rate system because I very much question whether if there were no dual-rate system, that the rate that would be enjoyed would be as it actually is under this practice.

Mr. TRIGGS. Your statement is quite correct, that much of agricultural exports is shipped under arrangements not covered by dual-rate provisions of ocean conferences.

Mr. MAILLIARD. When you have a special situation such as was described by the cotton shippers, they indicated how much of an advantage it was with them to have this relationship with the conference that guaranteed them that they could count on in advance because of their methods of sales and competition with people all over the world and knowing that the transportation would be made available.

It certainly has been testified that in times of international stress, specifically the Korean and the Suez crises, had we not had these conferences devoted to serving our trade, the prices would have probably gone right straight through the ceiling.

Mr. TRIGGS. I have not testified, and we have not adopted any policy in opposition to the conference method of fixing ocean transportation rates. It is merely that we feel within this method there is room for a little competition to keep the ocean conference rates in a competitive structure.

Mr. MAILLIARD. It has also been testified to here as an example of one conference that there was no competition when they did not have the dual-rate system. Since it has been incorporated they are now operating with four independents in the trade.

Mr. TRIGGS. Yes, sir. I am surprised that the independents have managed to exist in view of the extent to which the dual-rate principle has been adopted on our major routes.

Mr. MAILLIARD. You have suggested in your testimony that other people who have testified here have not looked into this question very much and do not know too much about it. I would like to suggest that perhaps the same might be true of your testimony.

Mr. TRIGGS. It might be. And Mr. Congressman, I testified on that point in response to a question and probably overstated what I meant a little bit. But it is, of course, a fact that this is an issue that has not been before the country as a general principle during recent years; this thing came up suddenly.

The Supreme Court decision was announced and almost immediately hearings were held up here. I just do not know how extensively this issue has been debated and considered by all the various organizations that have an interest in it.

I know in the field of railroad transportation nobody makes up their minds or is able to make up their minds without a long period of discussion and debate.

Mr. MAILLIARD. But this has been before the courts for some years, so I do not exactly think it came as a bolt from the blue.

Mr. TRIGGS. It is not news to the ocean shipping people, of course, but it is, I think, an unexpected development in the knowledge of most people not directly connected.

Mr. MAILLIARD. In view of that, do you feel that the membership you represent is familiar with the problem and therefore is able to support this rather general statement of policy that I do not think anyone could disagree with? None of us likes discriminatory practice.

Do you think they understand what is at issue here?

Mr. TRIGGS. No, sir, and I will say that, that very few of our members on this issue have any conception of it. I explained how our

policy has been developed in this case. This is a question in which our leadership did apply a general policy to a specific question.

Mr. MAILLIARD. Who makes the decision that under this general policy you should be here to testify against it?

Mr. TRIGGS. The board of directors. But I do have to say this, that there has not been an opportunity for our board of directors to deal with the resolution that has been submitted to the committee. We will deal with it by our board of directors next week.

My appearance here is based on the direction of our board of directors 3 years ago or 4 years ago, whenever it was, to appear in the Maritime Board case and to oppose the dual-rate system at that time.

Mr. MAILLIARD. As far as the American Farm Bureau of Federation is concerned you are not authorized to oppose this bill; are you?

Mr. TRIGGS. Yes, I am authorized to oppose dual-rate systems in ocean transportation as clearly as anybody.

Mr. MAILLIARD. That is surprising because your statement of policy here does not say that.

Mr. TRIGGS. That is what it is intended to say. We have had a dual-rate system in previous resolutions, but the folks thought this was a clearer way of saying it.

Mr. MAILLIARD. You also said in your testimony a few moments ago something about the Supreme Court having held that dual systems are illegal. You will find, if you read the decision, that is precisely what they did not do.

Mr. TRIGGS. I think there is room for consideration of other cases. They found this particular case.

Mr. MAILLIARD. It explains that they were ruling on a particular situation where, in their judgment, the dual-rate system was specifically designed to stifle competition.

Mr. TRIGGS. That is correct. This would be guiding to any future court in a similar case, but not necessarily completely settled.

Mr. MAILLIARD. In order to tie to this case they would have to make a finding of fact that in this particular instance it was designed to drive out competition, in order to be parallel with this case. Do you not think that is correct?

Mr. TRIGGS. I think your statement is correct, Mr. Congressman.

Mr. MAILLIARD. There is one thing I would like to clear up. Several times in your testimony you referred to cartels. What is your definition of a cartel?

Mr. TRIGGS. I do not know that this would be a textbook definition, but I would define a cartel as any agreement between two or more businesses to control production, marketing, or price.

Mr. MAILLIARD. Do you think it is a cartel if anybody else in the business can immediately join it?

Mr. TRIGGS. Oh, yes.

Mr. MAILLIARD. So that if it is completely open, it is still a cartel?

Mr. TRIGGS. Yes, sir.

Mr. MAILLIARD. Then the whole conference system is a cartel?

Mr. TRIGGS. Well, it is by definition.

Mr. MAILLIARD. If you are so opposed to cartels, why are you singling out the dual-rate system?

Mr. TRIGGS. We have not testified in terms of opposition to all cartels.

The CHAIRMAN. Some sin is all right, but some is not.

Mr. TRIGGS. There are situations.

The CHAIRMAN. Just a little does not hurt.

Mr. TRIGGS. There are some situations in which some regulations, internal or external, are advisable.

The CHAIRMAN. Is the Farm Cooperative a cartel?

Mr. TRIGGS. No, sir.

The CHAIRMAN. Just a difference of opinion?

Mr. MAILLIARD. I was just about to ask that same question. By your own definition the Farm Cooperative clearly is a cartel.

Mr. TRIGGS. There have been a number of instances in which legislation has been enacted providing specific examples to the antitrust statutes. I am not going to argue all of those were wrong. I think probably most of them were right. One of them is railroads. One of them is ocean transportation. One of them is authorization for a group of farmers to get together to market their own products jointly. One of them is authorization of labor workers to get together and market their labor cooperatively.

I am not arguing that any of these are wrong.

Mr. MAILLIARD. But by your own definition all of them would be classified as cartels.

Mr. TRIGGS. I probably ought to refine that definition a little bit.

Mr. MAILLIARD. Because this word "cartel," particularly when it is tied to the word "international," is a sort of odorous name. You have used it rather frequently.

Mr. TRIGGS. I hesitated to use it, but generally it is recognized as a cartel type of agreement in literature dealing with this subject.

Mr. MAILLIARD. Since you have already agreed that all cartels are not necessarily bad, it seems sort of not germane to your testimony that you describe this as a cartel.

Mr. TRIGGS. We have not opposed the authorization of the ocean shipping conferences to enter into voluntary agreements among themselves with respect to the regulation of rates or services. All we have said is that we think it is desirable that there be a competitive element of independents that can compete with the conferences to the extent necessary to avoid abuse of ratemaking authority.

Mr. MAILLIARD. Were you here when we had testimony regarding the experience of the growers of the Northwest shipping to the Far East?

Mr. TRIGGS. I am sorry I was not.

Mr. MAILLIARD. It was quite interesting because they even put pressure on one of their own members not to take advantage of a temporary lower rate in order that they could have a stability of known service and known rates in order to sell their products abroad.

Let me ask you if there is anybody on your board of directors that actually has business experience and knows anything about the problems of actually selling farm products abroad?

Mr. TRIGGS. I would expect that on our board of directors that most members of our board are also members, and prominent members of cooperatives who do engage in export shipments. How detailed their information and knowledge may be of this, I would not attempt to say.

Mr. MAILLIARD. I think you agree that our job is to find out what effect this actually has in practice rather than simply being theoretical about it. It seems to be quite possible that the dual-rate system may be beneficial to the American farmer, and you may not know it.

Mr. TRIGGS. They have not, within our organization, recognized this as a fact.

Mr. MAILLIARD. There was an opposition from your organization at one time to the Cargo Preference Act. That does not seem quite so violent any more.

Mr. TRIGGS. It still exists, but we recognize when we are licked.

Mr. MAILLIARD. That is all.

The CHAIRMAN. Mr. Pelly.

Mr. PELLY. I judge, Mr. Triggs, from your colloquy with Mr. Mailliard, that on boat cargoes of agricultural products you admit that they are fully competitive.

Mr. TRIGGS. I have no reason to believe otherwise. There was no dual-rate system in operation that I know of, which means that the independents can engage in competition.

Mr. PELLY. That would be the majority of the agricultural products.

Mr. TRIGGS. The majority of the agricultural products.

Mr. PELLY. Now, did your organization have, 4 years ago when these policies were established by them against the dual-rate systems, or have they since, any evidence that that system has in any way interfered with the free flow of agricultural products?

Mr. TRIGGS. No, sir. I do not believe it has interfered with the free flow.

Mr. PELLY. They testified that the Department of Agriculture would not have stepped into the suit unless they did.

Mr. TRIGGS. I think it is a question for the Department. They can speak for themselves. They are here. Believing as we did that there was a need for a degree of competition in the ocean shipping business, we did.

Mr. PELLY. Have you any evidence of the facts that the rates on agricultural products are not equitable?

Mr. TRIGGS. No, sir.

Mr. PELLY. In other words, the Department of Agriculture, as far as you know, has not stepped in, which they have the responsibility of doing, intervening if they have any complaint or find that the freight charges under the dual-rate system are excessive.

Mr. TRIGGS. I do not know whether the Department has or not.

Mr. PELLY. Do you know of any complaints regarding the rates being too high?

Mr. TRIGGS. I cannot say that I know, from my personal knowledge, of any situations where people have complained. We are not engaged in the determination of ocean rates at all.

Mr. PELLY. But you are taking a position on the matter that affects the ocean transportation of agricultural products, are you not?

Mr. TRIGGS. Yes, but this is on a basic issue of whether or not there should be any competition in this business.

Mr. PELLY. When you were commenting on the Government being a little too much in the farm supports programs, and so forth, I would have thought that you would have taken the position that there you would not want suddenly to cancel every law in the books and that it would create chaos. You would like to have a 2-year period, perhaps, in which to study out and come up with some modified program to help the farmers.

Mr. TRIGGS. That is quite a good point.

Mr. PELLY. But you are inconsistent, then, if you oppose this legislation.

Mr. TRIGGS. This is quite a good point. Because of the existence of surpluses which we feel have been created by the farm program, we could not be for sudden cessation, but we are for a fairly rapid transition to a freer market.

Mr. PELLY. You have heard testimony here that if the dual rate contract system is abandoned, the conferences will break up and there will be price wars. Would you say that a price war is good for any of the parties concerned in agricultural products or in shipping rates?

Mr. TRIGGS. Mr. Congressman, I just have an awfully hard time believing that the additional competition of the remaining independents would be so rough that it would result in a price war.

Mr. PELLY. Your opinion, then, is in disagreement with the transportation people who are supposed to know something about it and have had some experience, but you cannot speak for agriculture anyway and you certainly know the price war would not do the farmer any good and does not do the consumer any good in the long run? Is that not right.

Mr. TRIGGS. Price war is a term like cartel. It is a little loaded.

Mr. PELLY. Probably.

Mr. TRIGGS. We have a free market for most farm products and do not want to see it change. If you want to say that farmers are engaged in a price war in the sale of their commodities, well, that is just words. There are certain commodities that have not been involved in Government programs. We are for maintaining a free market for those which have been involved in Government programs. We are for going in a direction of a freer market as fast as we can get there.

Mr. PELLY. I must say that I read your publication and I agree in principle with what the Farm Bureau advocates, but it just seems to me in the case of tobacco, if there were no support prices, the little tobacco farmer would be desperate and the fellow who smokes cigarettes would not be benefited in the long run.

Mr. TRIGGS. It looks like we are getting into the discussion of farm price policy here.

Mr. PELLY. I do not want to extend that here. I have no further questions.

Mr. TRIGGS. It depends upon how much I should put on the record.

The CHAIRMAN. Mr. Glenn.

Mr. GLENN. No questions, Mr. Chairman.

The CHAIRMAN. Who are these independents that you repeatedly speak about?

Mr. TRIGGS. I do not know how many independents there are. Isbrandtsen is one.

The CHAIRMAN. Does he operate strictly American or does he operate American and foreign?

Mr. TRIGGS. I do not know.

The CHAIRMAN. You come here testifying about this. I ask you this: Does his American operation hold an umbrella over his foreign operation?

Mr. TRIGGS. I do not know. As I understand it, there are a good many other independents that we commonly call tramp shippers.

The CHAIRMAN. In the decision that the Supreme Court has handed down, they have at the same time granted a period of adjustment in the decision. Do you know anything about that?

Mr. TRIGGS. No, I do not.

The CHAIRMAN. Do you know anything about this integration decision that they handed down?

Mr. TRIGGS. A little bit.

The CHAIRMAN. You read the papers, do you not?

Mr. TRIGGS. Yes, I read the papers.

The CHAIRMAN. In the integration decision they gave a period of time for adjustment.

Mr. TRIGGS. Yes, sir.

The CHAIRMAN. Well, now, in this decision it breaks up a custom and a system that has existed, according to your own knowledge, a great many years. There seems to be opinions that it might be transitive, both to American industry as well as to the common carriers on the high seas.

Would you not think that a little period of study and adjustment into this before you do away with the whole thing might be advisable?

Just answer that in comparison with other things.

Mr. TRIGGS. Of course, nobody can disagree with the general principle that you stated, but I also hope it will be possible for Congress to permit the independents who still do exist to continue to exist during this period, because once competed out of business, there is the question of how they can come back into the business.

The CHAIRMAN. I want to give you the same opportunity to address yourself to the dual-rate system that I have others. Yet I want to remind you that the question before us is this resolution.

I want to ask you: Is this resolution fair or is it not fair in connection with the discussion that you and I have just had. ..

Mr. TRIGGS. Well, that is a difficult question to answer but we feel it would be desirable to leave in the picture the present independent operators and I am afraid this would rule them out. I do not know whether they could exist for another 2 years under a congressionally approved dual-rate system that has the effect, and I think has the purpose, of wiping them out of competition in certain lines.

The CHAIRMAN. I want you to think carefully about this.

I disagree with some of the former decisions of the Supreme Court but this is not the question. The question is that the Court gave a period of adjustment in certain decisions with which I might have agreed or disagreed. In this they did not give any period of adjustment. Is that correct?

Mr. TRIGGS. That is correct.

The CHAIRMAN. In a great industry like this, do you think it is fair, then, that they should wield the ax at one time and not give any period of adjustment or any opportunity for Congress itself to have a time to study this question and do a bit of legislating that might arrive at what you or someone else might think is the proper thing?

Mr. TRIGGS. Well, of course, Mr. Chairman, I guess there is a fundamental feeling here on our part that this is not the fundamental change that the industry feels that it is, that it is a comparatively minor change and that all that it does is to provide for the continued competition and existence of these independent operators.

The CHAIRMAN. You are dodging around what I asked you.

Mr. TRIGGS. I expect so, sir. I expect that is correct.

The CHAIRMAN. You know you are dodging around the question which I asked you directly. You know that.

Mr. TRIGGS. Two years is a long time, sir. If the committee feels that it must defer action, surely you could give consideration to the matter in a much shorter period of time. I am just talking now. Our policy is opposed to this.

The CHAIRMAN. We had a matter here that is in controversy in the House now. We gave 2-years' study. We went to the people on the subject. Yet it is controversial and I understand the controversial part of it. I think quick, wrapped, permanent legislation sometimes is detrimental to all sides.

This is just a period in which to study a question.

In all respect to you, and I am interested in your organization, by your own testimony you do not know much about this whole situation. You admit that yourself.

Mr. TRIGGS. I freely concede that I do not pretend to.

The CHAIRMAN. You do not know much about the operation of ocean international transportation, do you? You would not set yourself up as an expert on it?

Mr. TRIGGS. This, I think, is painfully obvious to the committee.

The CHAIRMAN. Of course it is.

Mr. TRIGGS. This is a far broader proposition than just ocean transportation. This is the whole basic issue of competition versus regulation and whether we can keep a competitive principle available in a regulatory system.

The CHAIRMAN. I want to ask you one question. As I say, I am a member of the Farm Bureau. You went into the insurance business, did you?

Mr. TRIGGS. Our State Farm Bureaus are in the insurance business.

The CHAIRMAN. You went into the insurance business and at all your big State meetings and on a lower level when you have your meetings you have insurance representatives there to make a big speech about the benefits of the Farm Bureau Administration and their insurance. You do not let any other insurance companies come to speak to that gathering, do you?

Mr. TRIGGS. Not to my knowledge.

The CHAIRMAN. You have a little cartel there, have you not?

Mr. TRIGGS. No, I do not think so. I have not heard at an annual meeting of a State Farm Bureau what you say happens but I do not say it does not happen.

The CHAIRMAN. You do not go to the State and county meetings, do you? Anyway, we are not going to fuss over that.

I am glad to have you here. I think you are a little out of your field.

Mr. TRIGGS. I appreciate the opportunity.

The CHAIRMAN. Counsel has questions.

Mr. COWEN. Mr. Triggs, following the line of questioning of the Chairman and Mr. Mailliard and Mr. Pelly, I believe you were authorized some 3 or 4 years ago to appear against the dual-rate system?

Mr. TRIGGS. Yes, sir.

MR. COWEN. I believe you stated further, sir, that your rank and file membership did not understand the resolution which is before this committee?

MR. TRIGGS. This is quite correct. In general, our resolutions flow from our State Farm Bureaus to our American Farm Bureau Federation, but there are issues in which our people are less interested, less informed, and which our board deals with.

MR. COWEN. You are authorized to appear here in this hearing by your board of directors?

MR. TRIGGS. Yes, sir.

MR. COWEN. Are they conversant with the resolution before this body?

MR. TRIGGS. I have to say this, sir: Authorized to appear in opposition to the dual-rate system, not at this specific hearing.

MR. COWEN. That is what I am getting at, sir. They are opposed to the dual-rate system as such.

MR. TRIGGS. Yes, sir.

MR. COWEN. As you know, this is interim legislation brought out in order to give the Congress time to go into the factors behind the dual-rate system due to the recent Supreme Court decision.

MR. TRIGGS. Yes, sir.

MR. COWEN. Do you feel, sir, that you are in a position to speak for the rank and file of the Farm Bureau members who have no knowledge either of this resolution or of the dual-rate system?

I realize, of course, sir, that you are authorized to appear, but do you feel, sir, that you are speaking for the rank and file in opposition to H. R. 12751, when you appear here when they have no knowledge of it, sir?

MR. TRIGGS. This is a good question and the answer is obvious. I think you have indicated it. It is that most farm people do not have any knowledge of this situation.

One of the reasons that they join the farm organization is for the farm organization to analyze the issues that they are not familiar with and represent their interests in those things. On the important things particularly, those directly related to agriculture, they expect to make up their own minds and tell us what we are to do.

MR. COWEN. That is all, sir.

THE CHAIRMAN. That is all.

The gentleman from Agriculture.

Thank you very much.

MR. TRIGGS. Thank you very much, Mr. Chairman.

STATEMENT OF CHARLES W. BUCY, ASSISTANT GENERAL COUNSEL FOR MARKETING AND REGULATORY LAWS, DEPARTMENT OF AGRICULTURE—Resumed

THE CHAIRMAN. Mr. Bucy, I want you to address yourself to H. R. 12751. Mr. Ray would like to ask a question.

MR. RAY. You heard my reading of the Secretary's position as it was in the brief in the Supreme Court case?

MR. BUCY. Yes, sir.

MR. RAY. Has that position changed?

MR. BUCY. Not to my knowledge.

Mr. RAY. And he is still in opposition to the dual-rate system?

Mr. BUCY. I have had no indication that the Department has changed its position in that regard.

Mr. RAY. That is all, Mr. Chairman.

The CHAIRMAN. Why did the Department take a position of that kind if they find that the shipping under the dual-rate system is not binding on them and seems satisfactory to the Department that does the shipping?

Mr. BUCY. Well, I heard the reference to Mr. Hudtloff's statement. I think he was addressing himself to his job as transportation warehousing manager for the stocks of agricultural commodities that come into the hands of the Department through the various programs that it administers, a great many of which involve substantial shipments in international trade, and as far as that goes by reason of the fact that the Department has not in that activity been subject to the dual rate or the retaliatory aspects of it as we see it; and also in the litigation there was no question of refusal of space. That only got into the litigation through a concept of the Board in its decision which it was pointed out to the court if agreed to would result that space could be denied under the dual-rate system, not that it was being under the dual-rate system that was in litigation.

The Department appeared in this litigation in two capacities: It appeared pursuant to the mandate of Congress that it should represent the agricultural community generally in rate and transportation matters; it also appeared as a substantial merchandiser and shipper of agricultural commodities.

Now, in that capacity as a shipper of agricultural commodities, the Department was in a position of negotiating for its shipments. Therefore, it had no immediate impact of the dual-rate system.

However, its position on that was that, even if you are negotiating, if the dual-rate system in an instance is successful in its ultimate objective of obtaining the traffic all in that area, then you are negotiating with someone who has the club as far as negotiations are concerned. You have not the freedom that you have where you can negotiate with independents as well as with conference members.

That is the phase of it that enters into the activity that Mr. Hudtloff is concerned with.

I can understand Mr. Hudtloff having a job of managing transportation, taking a position that he was not concerned in that particular operation in a day-to-day operation with the dual-rate system unless it eventually resulted in elimination of his freedom to negotiate with independents.

As to the agricultural community generally, that is the traffic that moves privately, the Department took the position that there was violation of the Shipping Act of 1916 in that there was a retaliation against a person who refused to enter into a contract, that there was no difference in type of service, cost of service, or difficulty of rendering service to justify any different rate as between the comparable shippers and therefore it was discriminatory.

The CHAIRMAN. Mr. Hudtloff was dealing in practicalities. You are dealing in theories.

Mr. BUCY. He was dealing in a job as a traffic manager did in his day-to-day operations as to whether, as of now, the dual-rate system

interfered with his doing his job in an efficient and economic manner. He was not dealing with the broad concept of whether dual-rate systems are objectionable, as such, where they do have an impact.

The CHAIRMAN. Have you read Resolution 12751?

Mr. BUCY. I have, sir.

The CHAIRMAN. Is it the position of the Department that they are opposed to this?

Mr. BUCY. That is the point that I addressed myself to yesterday, Mr. Chairman, and I think it was demonstrated by the witness previously that it is not a matter of the Department delaying in answering your requests for a report on this matter, but I am sure that this committee wants a considered and informed judgment of the Department and it has been demonstrated here, I think, that this is a complicated problem and therefore the matter is being considered by the Secretary's policy staff to furnish you with their best judgment, not as to whether the fundamental principle should be decided one way or the other, but whether circumstances are such that they feel this interim relief is warranted.

As you know, in this particular litigation, in fact, a stay of the effectiveness of the dual-rate conference was issued by the appellate court so that it was not allowed to go into effect while the merits were passed upon because there was an adequate showing to the lower court that there was merit to the position in opposition to the dual rate and that there might flow damages that could not be repaired if it were allowed to continue during the litigation so that that is a matter of the particular circumstances being considered.

The CHAIRMAN. What is your personal opinion with respect to this resolution?

Mr. BUCY. I do not think that I am sufficiently informed as to what the impact upon the independents or the elimination of competition would be in a period of 2 years. The Congress has in effect said this is an unfair practice. It is a common practice to issue orders that are effective forthwith against practices that are unfair.

The CHAIRMAN. Congress has not said anything about this thing.

Mr. BUCY. Congress in the 1916 Shipping Act has stated that, so, as of now, the Supreme Court has said that it was the intent and purpose of Congress that this type of rate conference not be indulged in.

Mr. MAILLIARD. Would the chairman yield on that point?

Did the Supreme Court say that? It is my understanding that what the Supreme Court said was that if this dual-rate system is used as a weapon to destroy competition, it is in violation of the 1916 act.

I cannot see where they ever said that the dual rate per se was illegal.

Mr. BUCY. They passed on this particular rate and the fact that they said that they found that this particular rate was for that purpose, is my recollection; and, if you have read it, you know it is a rather complicated opinion and it is going to require a substantial degree of analysis before they will come up with the final conclusion as to just how far they will go.

The CHAIRMAN. Who will come up with that conclusion, then?

Mr. BUCY. They at least said that this particular dual-rate system involved in this litigation was illegal as being for the purpose of eliminating competition.

Mr. MAILLIARD. That does not affect any other dual-rate system.

Mr. BUCY. The extent to which it has an impact on the others will have to be determined by future litigation or actions by the Maritime Board and I do not think anyone right at this moment is in a position to express a controlling opinion as to just what the extent of that is.

Mr. MAILLIARD. What I would like to know is when the Department of Agriculture intervened in this case, did it do so in the belief that in this particular litigation American agriculture was being injured by the dual-rate system or did it do so as a matter of general policy opposed to the dual-rate system in all cases?

Mr. BUCY. The Department of Agriculture does not enter into these matters unless they feel that there is an effect upon the agricultural community's interest.

They took the position in this case with the Department of Justice that this was retaliatory, that it was also an unjust or unreasonable discrimination and any unjust or unreasonable discrimination against agriculture certainly would be harmful and to the extent that it applied to agriculture shipments the Department would take the position it was harmful to agriculture.

Mr. MAILLIARD. But did the Department take that position with respect to this particular conference?

Mr. BUCY. It has taken it with respect to this and several others. There is presently pending in litigation your North Atlantic conference which the lower court held in abeyance pending the Supreme Court's action on this particular case.

Mr. MAILLIARD. Would we be right or wrong or going too far to assume that the Department's official position is in opposition to the dual rate per se or just where they can find injury or think they can find injury to the agricultural community?

Mr. BUCY. I think the position that was taken in the litigation was that the dual-rate system that was involved in these particular litigations at least was per se violative of the law and was per se harmful to agriculture's interest.

Mr. MAILLIARD. It is quite possible, it is not that in other conferences where the dual-rate system prevails the courts might not find that it was discriminatory.

Mr. BUCY. It is conceivable. Basically, I think as a general proposition we would feel that it was suspect as being unfair but every case has to be decided on the facts of the particular case and how it applies to the shippers.

Mr. MAILLIARD. You can certainly understand, sir, I would think, that that is throwing a cloud of doubt over all these other cases which may take a long time to prove out in litigation as to whether they are legal or not legal. All this bill does is to protect those until the broad policy question is decided.

Mr. BUCY. I understand the purpose of this bill. Of course, in this matter, the appellate court a couple of years ago decided that this was illegal and it was a matter then of going to the Supreme Court on review to determine whether the Supreme Court sustained the appellate court so that this is not an overnight thing of industry or anybody

else being put on notice that this particular dual-rate system at least was questionable as to its legality. But, as I said, the matter of the position on this interim relief is now under consideration by the Department and I have urged upon the Department's officials that they expedite getting to this committee their views on this particular litigation at the earliest possible time.

The CHAIRMAN. That is what I wished you would do.

Mr. Pelly?

Mr. PELLY. I would like to ask if in the past the Department has had reason to suspect that this might be harmful to agriculture. In other words, have you in the past intervened in any rate cases?

Mr. BUCY. We have been in rate cases, any number of them.

Mr. PELLY. In other words, you do go before the Federal Maritime Board?

Mr. BUCY. Interstate Commerce Commission, Maritime Board, or CAB, if it is a question of airfreight rates and also in some instances where there is a tiein with intrastate before State regulatory boards.

Mr. PELLY. You have claimed that conference rates under the dual-rate system has resulted in exorbitant costs to the shipper.

Mr. BUCY. The position of the Department was not based——

Mr. PELLY. You just hold everybody suspect?

Mr. BUCY. On cost. It was based upon the discriminatory nature or retaliatory nature as between shippers, not as to the altitude of either the minimum or the maximum involved, but rather the discriminatory nature of the rate.

Mr. PELLY. I just wondered if farm organizations had appealed for your assistance in going down to the Federal Maritime Board and taking a rate which has been filed under a condition and finding that it is too high.

Mr. BUCY. Right offhand, I cannot give you an answer to that, but I know that we are frequently in cases before regulatory bodies, the Interstate Commerce Commission as well as the Maritime Board, where we have been urged by farm groups generally to participate because they feel that the rate is too high or where its application would increase the rate, that the increase is not justified on agricultural commodities, so that I would not be at all surprised if we had had a request in the maritime field as well as in the rail and truck transportation field, but I cannot put my finger on it offhand specifically.

The CHAIRMAN. We want you to find out so that we can put it in the record. Will you cite it?

Mr. BUCY. I will be glad to, Mr. Chairman.

(The information referred to follows:)

The answer to the question as to whether any farm organization has requested the Department to assist in obtaining lower shipping rates is that no national farm organization has made such a request. However, the Department has been asked by the Northwest apple and pear producers and shippers and the Florida citrus shippers to assist them in having their ocean rates adjusted.

The CHAIRMAN. Mr. Crinkley, of Isbrandtsen.

STATEMENT OF MATTHEW S. CRINKLEY, EXECUTIVE VICE PRESIDENT, ACCOMPANIED BY JOHN J. O'CONNOR, ISBRANDTSEN CO., INC., NEW YORK

Mr. CRINKLEY. My name is Matthew S. Crinkley. I am executive vice president of the Isbrandtsen Co., Inc., of New York City, and I appear to oppose the passage of the resolution here involved and wish to make a statement as to the reasons for our opposition.

The Isbrandtsen Co., Inc., and its predecessor company, have been operating ships on American foreign-trade routes since 1916. Until 1938, the company's predecessor operated foreign-flag vessels exclusively, but since 1938 Isbrandtsen operations have been shifting to American-flag shipping, which comprises most of its shipping today.

The CHAIRMAN. By the word "shifting," you mean you have not gone wholly under operation of American flag?

Mr. CRINKLEY. No.

The CHAIRMAN. You say "shifting."

Mr. CRINKLEY. Have been shifting to American-flag shipping.

The CHAIRMAN. Yes.

Mr. CRINKLEY. Which comprises most of its shipping today.

The CHAIRMAN. That means that you are both in foreign operation and in American-flag operation?

Mr. CRINKLEY. In a very limited way in foreign-flag operations.

I say further, in the very early future, Isbrandtsen intends to operate exclusively with American-flag vessels.

Isbrandtsen has never been, and is not now, a member of any of the steamship conferences, and is the largest independent steamship line operator in the world.

There are approximately 125 steamship conferences operating on American foreign-trade routes and in almost all of these conferences, all matters are decided by majority vote, which means the foreign lines dominate these conferences and can exercise control, if they so desire.

Of the 125 steamship conferences operating on American foreign-trade routes, at our last count, 62 used the conference-contract dual-rate system and 63 conferences did not.

Of the 75 American-flag ship operators on American foreign-trade routes, 41 are members of the conferences and 34 are not. Of the 41 American-flag lines who are conference members, only 24 are members of conferences which use the conference-contract dual-rate system.

As to the American foreign-trade routes on which 63 conferences operate, but where the conference-contract dual-rate system is not used—rates and sailings are as stable as on those routes where the conference-contract dual-rate system is used.

Even this bare and restricted recital of basic facts fully proves the falsity of the distortionate contentions of conference proponents as to the conference-contract dual-rate system relating to stability of rates and sailings and the interests of American shipping.

The use of the conference-contract dual-rate system on American foreign-trade routes is contrary to the general public interest.

The plain and simple purpose of this conference-contract dual-rate system is to destroy and/or prevent independent competition. If the conferences could realize the complete, so-called stability of

rates they seek, it would mean the absolute end of any price or rate competition. Any contrary statement by conference spokesmen cannot possibly stand up or be substantiated.

Shipping on foreign-trade routes is international in character since either the load or discharge ports are in other countries and, accordingly, no effective governmental control of rates is possible. In this country we allow certain monopolies, such as public utilities, but in every case prices and rates are completely controlled in the public interest. It can hardly be considered to be in the public interest to permit these international shipping cartels to use a device which generally enables them to attain an actual monopoly—and with no governmental control of rates. Under the circumstances, the public interest will be protected only by the presence of energetic and bona fide independent competition.

Next, consider that all the conference steamship lines are common carriers. This means each and every one of them has the inescapable obligation to extend to any and every shipper the same rates, terms, and conditions for the same transportation. Otherwise, you might as well permit, for instance, the domestic rail carriers to use the contract dual-rate system, with a higher rate applied to the cargo of shippers who would not contract with rail carriers to boycott air, motor-truck, or domestic water carriers.

It has been and is a basic public policy in this country to foster and encourage the competitive, free-enterprise system. This policy has had much to do with the enormous growth of American industry and the high standard of living enjoyed by the American people. In this country we do not favor the fixing of prices or rates, the control of production, the pooling of revenue or income by agreement—yet all of these things are freely permitted the steamship conferences on our foreign-trade routes. Surely, it is dangerous and against the public interest to permit the steamship conferences, in addition to these monopolistic privileges, to use an exclusive patronage conference contract dual-rate system designed to completely suppress any real rate competition. This situation is spotlighted even more when it is realized the steamship conferences on American foreign-trade routes establish freight rates generally on what the traffic will bear and this cannot be seriously disputed.

Naturally, under such a setup, when business is active many of the foreign lines especially will realize sufficient profits to pay for their ships in 5 years, or less, considering their favorable position with respect to taxes—and all this at the expense of American importers and exporters. The use of the conference-contract dual-rate system tends to perpetuate such an arrangement.

It is significant that no department of the United States Government engaged in shipping goods abroad may sign a conference contract because of the desirable legal necessity for purchasing materials and services competitively. These conferences, comprising a preponderance of foreign lines, have graciously permitted departments of the United States Government to enjoy their so-called contract rates without requiring or forcing these departments to sign exclusive patronage contracts. But why should the ordinary American exporter or importer be denied his natural rights and privileges to similarly purchase goods and services competitively?

An examination of the contract forms used by the conferences in their conference-contract dual-rate setup will show how vicious they are. These contracts would bind American shippers to ship exclusively with members of the conference, but, on the other hand, conference lines do not obligate themselves under the contracts to carry 1 pound of cargo—they simply state they will take the shipper's cargo on any vessel they can arrange, or some such similar language. There is talk that by conference membership shippers are enabled to make plans for future forward periods. All of the conferences' contract forms provide the conference with the right to change rates on 60 or 90 days' notice. Further, a responsible independent carrier is fully as able to quote forward rates as any conference group of lines and customarily does so.

It must be remembered that most American shippers, from a business standpoint, have been born and raised under the conference setup, accepting the conference-contract dual-rate system, and like those born under a dictatorship, do not always realize what the lack of their natural rights and liberties involves. This is well illustrated in the cotton trade for it is a fact that only when independent competition has been active have the cotton shippers been able to get considerate treatment from the conferences in the matter of freight rates.

The present conference contract rate on cotton from United States gulf ports to Antwerp, Hamburg, and Genoa, which involves incidentally voyages of from 15 to 25 days, is \$1.65 per 100 pounds. To the port of La Guaira, Venezuela, only 4 or 5 days from gulf ports, and where there is no independent competition, the conference rate is also \$1.65. To Valparaiso, the conference rate is \$1.80 per 100 pounds; to Buenos Aires, the conference rate is \$2.95 per 100 pounds; to Yokohama-Kobe, the conference rate is \$2 per 100 pounds; and to Bombay, India, the conference rate is \$2.55 per 100 pounds.

In those latter trades there is no substantial and in some cases no independent competition.

I might add that all conferences and independent tariffs carry an item by the name of "general cargo" which means items that are not specified by name.

The conference lines operating to India or my company would be quite happy to have that cargo at \$40 per payable ton. There is competition there and I say that rate is profitable for an American ship. Yet, on general cargo, to Venezuela and Colombia, very short distances away, where there is no independent competition, the general cargo rate is \$60 per ton, to the west coast of South America \$80 per ton. Or take the case of leaf tobacco in hogshead. The conference-contract rate to continental Europe—Antwerp, Rotterdam, and Hamburg—where there has been independent competition—is \$2 per 100 pounds, and to Bombay, India \$2.65 per 100 pounds. The conference contract rate in certain trades where there has not been active, independent competition compares about as follows.

I might say that the rate is on a weight or measure basis but translated per hundred pounds, it works out:

	<i>Per 100 pounds</i>
To La Guaira, Venezuela-----	\$5.00
To Valparaiso, Chile-----	7.25
To Santos, Brazil-----	5.95
To Yokohama-Kobe-----	4.00

What about rate wars and cutthroat competition? The conference contract rate system has no bearing on that particular matter. I can tell you of a serious rate war which erupted when the conference-contract system was not in use and another where the conference-contract system was in use. I can cite an instance in a trade between foreign ports where all the lines serving were conference members and where the conference contract rate system was in force, yet a rate war developed and went so far that for a short time those conference lines carried freight from England and continental Europe to India free.

Under existing law, the Federal Maritime Board has very considerable authority to deal with unfair trade practices as to shipping on American foreign trade routes. The quoting of rate-war rates under the cost of handling is obviously an unfair trade practice and one which could be dealt with by the Board. I think the Board must and will more fully exercise its regulatory ability and authority in the future and, if so, it should be able to reasonably cope with this type of problem.

Isbrandtsen has carried on a long and costly fight against the conference contract dual-rate system, which we have always considered a vicious and unlawful practice. One reason can be stated as follows:

Take the Far East trade—the Far East conference was comprised of 23 lines, 18 of which were foreign and 5 were American. Under majority vote rule, the foreign lines certainly dominated and they could control the activities of that conference. Isbrandtsen operated independently of that conference, in which connection I will comment later. Isbrandtsen used only American-flag vessels purchased from the United States Government, but found as to American shippers, especially those large American shippers who have required more sailings than a single carrier could provide, were forced by the use of the contract dual-rate system to contract with the conference to, in effect, boycott our American ships. Why? Because we would not join this conference and thus subject ourselves to domination and possible control by foreign lines.

Although our vessels were owned and operated by American citizens—constructed in American shipyards and handled by American seamen on American trade routes—in effect, those foreign lines, by the use of the conference contract dual-rate system, denied us access to any of the business of many important American shippers. Such a situation was and is intolerable, as all will agree.

Why does not Isbrandtsen join the conferences? Suppose the question were worded differently, but with the same meaning. Why does not Isbrandtsen join the international cartels? Would any answer really be necessary?

However, it might be interesting to know that on a number of occasions Isbrandtsen has stated publicly we would join all the conferences in sight, more, even fight to get in, if necessary, if:

(1) Any way was ever found to insure that conference members would honor their promise and their word as to maintaining agreed rates.

(2) The conference lines, realizing the export-import business of the shipping public is their own bread and butter, would themselves set up substantial and effective trade development facilities in the various countries they serve to seek out and build up business opportunities for their shipper customers and, consequently, for themselves.

(3) Appreciating the substantial and important bearing of freight rates on the landed and competitive price of exports-imports, as to the countries they serve, the steamship conferences would take the initiative and continually investigate and adjust freight rates where needed and possible, without necessarily waiting for shippers to raise the question and plead for action.

The above sets forth a sound and constructive program which, if effectuated by the conferences, would mean much to American foreign trade and to the conference members themselves. Under a setup of that kind the conferences would not have to rely upon coercion of shippers for support but would earn and deserve support. Isbrandtsen would certainly want to participate in any such constructive program.

In this statement I have not been able to comment on all considerations involved, but I am entirely willing to answer any questions or go further, if requested. I can see many sound reasons why the exclusive patronage conference contract dual-rate system should not be permitted on American foreign trade routes, and no sound reason why it should be allowed.

Finally, I take the liberty, hoping none will be offended, to suggest that all concerned with the proposed legislation, if at all possible, read the report of the famous Alexander committee, H. R. Document No. 805, 63d Congress, second session. The investigation of this committee led to the enactment of the Shipping Act, 1916. The facts developed and reported by this committee are timely and pertinent to the present situation.

I should like to say further, if I might be permitted, that Mr. O'Connor has spoken to me about certain questions which were asked as to company policy and made a note of them.

I would like to answer them, if I might at this time.

First, there was a question as to whether or not we would join the conferences if we are subsidized.

The answer is we do not plan to join the conferences if we are subsidized for two reasons. First, there is a precedent already established by the Board that American subsidized lines do not have to belong to conferences. That was set up with subsidization of the Robin Line to South Africa, who, incidentally, competed directly with the American-South African, now the Farrel Lines, in that trade. Robin was not a member of that conference and not so during the many years they operated under subsidy.

Another reason is that, as I think would be gathered from my remarks, we are against conferences unless a far more constructive program would be adopted, as is not the case.

As to our foreign-flag operations, I wanted to comment as I did in my statement that Isbrandtsen is moving toward using American ships exclusively, but on the other hand when we speak about conferences we are actually talking about something where there are about 400 lines in the conferences operating on American trade routes and about 360 out of those 400 lines are foreign lines, so that I do not know exactly the significance of the question but I believe I have answered it.

The question has been raised about us as a rate cutter. I have no apology to make there for furnishing American exporters and im-

porters with competitive rates. For all of the years since my company has been in existence and its predecessor company, we have managed to scramble through with a profit except for 2 years.

I would say this: If we as an American operator have been able to operate at cut rates, unsubsidized as one of the highest cost carriers in the trade; and do that profitably, I do not know why anybody has any real honest objection.

The question has been raised as to whether or not we are an industrial carrier bringing in our own goods principally. Our company does a quite substantial commercial business but only about 5 to 10 percent of our goods move on our own ships. We are not anywhere at all as large as, for instance, good conference lines like Grace and the United Fruit who have tremendous commercial interests and which move on their own vessels. We have a large business in the import of green coffee. Not one pound moves on our vessels. We import substantial quantities of raw rubber. Not one pound has moved on our vessels in the last 2 or 3 years.

We attempted to buy rubber on the basis that we could put it on our vessels but the conference contract system was applied apparently too rigidly there for the shippers to feel that they might do that.

We import and export grain. At times we carry it on our own vessels. At times we ship with other carriers.

We import oil, some of which comes in vessels we charter and some of which we ship with established lines, preferably American lines, so that I should say that our position is we do substantial commercial business, but, for one reason or another, there is a very, very small proportion which comes on our vessels. I wish it were more.

I believe that those are the questions that were raised.

A question has been brought up concerning our operation out of the United States gulf ports. We began a service from the gulf ports to Antwerp, Rotterdam, Hamburg, and French ports in 1947 and in that we used principally foreign-flag vessels.

However, some over 2 years ago, we entirely disposed of that line to our former agents in Holland, Messrs. Vinke & Co., who used Dutch vessels. They have been served by our branch offices since that time in our capacity acting as agents.

We are in the process that I spoke of, of shifting entirely and exclusively to American flag vessels, of disposing of all of our interests that involve foreign flag operations, so that we have set up a separate corporation to take care of these branch offices under the name of Amerind Shipping Corp., and we expect to and are in the process of disposing entirely of those corporations, in line with our intention and decision to engage exclusively in American shipping.

I think one more point might be made in that connection. That is, that there are quite a number of American lines, including one which was identified yesterday (States Marine), very enthusiastically by its counsel, are probably one of the largest agency firms acting for foreign lines in this country today.

I do not necessarily contend that that is to be held against them. I am just saying that for an American shipping company to act as an agent for foreign lines is something that quite a number of the concerns do.

That is the extent of my voluntary statement, sir, but I should be very glad to answer any questions that might arise or make any further comment that may be desired.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Crinkley, there was a statement by Mr. Labagh, I think, that had to do with the carriage of cargo from the west coast to Puerto Rico and he indicated that there was some considerable confusion and difficulty arising from the fact that with two freight rates a shipper found himself with complaints from his several customers because of the difference in rate. He said that the customers would like the shipper in that case to equalize the rate.

What is the point there from your point of view as to whether there is confusion or what they commonly call chaos, for want of a longer word, I guess, in the trade?

Mr. CRINKLEY. I think just a very short explanation of the situation which developed would probably answer several different questions including the one you spoke of.

After some substantial increases in stevedoring expenses and other cost items, about a year ago, the lines engaged in that trade considered that it would be necessary for them to make some compensating increase in freight rates.

At the initial stage I believe there was only one other carrier in the trade but a strong conference member of a conference that formerly existed there which I believe he contended was being maintained although the other member was not active, and that carrier announced a 15-percent increase in rates.

We had sent a man to the coast to contact the shippers and find out how their competitive situation would be affected with increases in rates.

We likewise were making a study to establish in just what amount our rates should be increased to cover our increased expenses.

We accordingly were asked by the Cannery League as to canned goods not to quote a lower rate than a 15 percent increase which had been announced by the competing carrier because they considered that this confusing factor would arise.

The rice people in California were very certain that such a heavy increase would very seriously affect their competitive position in rice in Puerto Rico and they were very earnestly soliciting us. They knew some increase had to be made but not to the extent of 15 percent.

We wound up there by increasing the rate on rice 7½ percent and making the full increase of 15 percent on the canned goods, as has been requested.

Mr. ALLEN. It seemed to me——

Mr. CRINKLEY. That is not quite the end of it. I will bring up the point that he talked about.

Shortly thereafter, about a month and a half or two months, a third carrier, namely, States Marine, announced that they intended to enter the trade from California ports to Puerto Rico and they announced that the scale of rates they intended to establish were the old rates before the increase in expenses, and so forth, plus 7½ percent. So there you had a situation that 2 of the 3 carriers involved had increased canned goods and dried fruit by 15 percent, one of the carriers had the old rate plus 15 percent on rice, we had 7½ percent increase on

rice, and States Marine quoted 7½ percent increase on rice and other cargo items, and with the fact that States Marine was a new operator and many rumors were going about, there was considerable confusion in the matter.

In that case, of course, where rates are controlled by the Maritime Board, we and the other carriers joined in asking that permission be given to file a short-term filing of a tariff calling for the old rates plus 7½ percent, uniform, to restore, to get away from some of the confusion, but end these rumors this way and that, and that we would later have to study the question as to whether further increases would be necessary, in which direction we have not moved nor have the others since that time.

Mr. ALLEN. That brings me to the fundamental question which has been giving me some trouble. It would seem to me that in the matter of transportation and the rates of common carriers, you have to make a decision as to which philosophy you adhere to, whether it is better to have a regulated system as to that item in the cost of the goods that are involved and set up something like the Interstate Commerce Commission or a conference-rate system that is mandatory or made virtually mandatory by some device like the dual-rate system, or whether you leave the carriers to the field of an independent competitive business where they can compete as suits their own best interests.

As I said to Mr. O'Connor, it seemed to me that Isbrandtsen went further toward the individual competitive viewpoint and that the conference dual-rate system went toward the regulated mandatory tax concept.

Am I right or wrong?

Mr. CRINKLEY. I would say in that respect that even as to domestic transportation which is completely controllable by our ICC or other authorities that public policy has been against freezing a single freight rate structure for all.

The gentleman testified this morning that many of the inland waterway carriers are not even regulated in our domestic setup and their rates are certainly different.

I should say that you can ship steel from Pittsburgh to New Orleans by rail and you will pay one rate; possibly by motortruck, depending on the type and size of shipment, and pay an entirely different rate; and ship by barge and enjoy a much, much lower rate because of the natural economies of water transportation.

I do not think for a moment that we ought to take the highest cost operator, whether rail or truck, and from now on all cargo moving from Pittsburgh to New Orleans must be carried for a single rate. If that is true in domestic commerce where both ends of the transaction are within our own jurisdiction, if it is the policy to maintain some difference in rates and some competition, it is 10 times more important that such a thing be present and true in our foreign trade simply because, as to many, many and most of the items of goods that we export, for instance, whether they be agricultural to some extent or manufactured goods, the competition in overseas markets is terrific.

It has not been 2 months since General Motors in their export work made a public statement in New York that they had been forced out of several overseas markets by high freight rates, so I should say it is very much to be desired that some definite rate competition be main-

tained in foreign trade rather than any concept that all the rates must be a single fixed figure and particularly if it is left to the carriers, in effect, to do the fixing.

Mr. ALLEN. Well, does that sort of confirm the thought that I had that it would be your philosophy to leave some competition in the conditions that exist in ocean transportation but that most of the other American-flag carriers have come to a conclusion that they want as near a single-rate system without competition as they can accomplish?

Mr. CRINKLEY. Well, I think they are wrong and I do not hesitate to say so.

Mr. ALLEN. Let us get it in two parts.

First, do you and they disagree, and second, are they right or wrong?

Mr. CRINKLEY. We very violently disagreed on more than one ground.

First of all, there may be some soundness in a policy of enabling carriers to get together and, by their own agreement and without any regulatory control, fix freight rates. Maybe there is good reason for that. Otherwise the 1916 act would have never been put on the books. But there would be a vastly different thing there from saying "We are not only going to let these people get together and without any control fix the rates that the American exporters and importers are permitted to pay," and, second, say, "Let them do something that will put out anything that will make for competitive sales."

We have felt that carriers particularly in foreign trade have to be more flexible than this old overworked word of "stability" means because foreign trade is flexible. The competitive conditions change, and if you have too much so-called stability which really means inflexibility, you see American markets disappearing; and, incidentally, except for aid program cargo, American markets are disappearing. I will mention that in my early days with Isbrandtsen, and I have been with them since 1930, probably the biggest single item of manufactured goods that went into export was automobiles and American automobiles were used everywhere in the world.

Last year, the greatest exporting country on automobiles was Great Britain, not the United States, and that is happening with many, many different items, so that any concept of freezing any rate-making setup where the benefits of flexibility are lost is going to damage seriously, in my opinion, the foreign trade program of our country concerning the agricultural and manufactured goods and this is based on experience in both fields.

I have worked in the field of export. Before I went in the shipping business I worked in the leaf tobacco export business in eastern North Carolina for about 10 or 12 years. From there I went into shipping. I have both sides of the question in my experience.

Mr. ALLEN. Would the operation of this Supreme Court decision materially affect the policies under which the American lines that are in the dual-rate system have been operating?

Mr. CRINKLEY. I think it would force them to consider the matter in the same light as the 63 conferences who do not and have not used the system since World War II. Surely, if 63 conferences have not found it necessary, have not experienced rate wars and comparable circumstances but have been going along in an ordinary and stable

way as much so as those that have used it, it is rather fantastic for it to be claimed seriously that the use of this practice is necessary to avoid rate wars and all the horrible conditions that have been foretold. It is happening before our eyes. There are 63 conferences that do not use it. How can they do it if the position taken by these people is true?

Mr. ALLEN. Is it not equally true then that if 62 have considered the dual-rate system as necessary or desirable that it would probably be well from our standpoint who have no interest in either one to so handle the present problem that we would have a definite determination after the period of study that this bill would provide.

Mr. CRINKLEY. Well, I would answer that, sir, in not the slightest disrespect about it, I would say that if your reasoning is going to be in that direction and considering the long story which has been put before Congress by the railroads, surely you should give them the same type of thinking to stabilize their conditions and make their revenues sufficient by enabling them to force by economic pressure people who must use the railroads to boycott any other form of transportation that might offer a different rate.

I think it would be going a long way for the American Congress to say to American shippers, "We are going to put legal authority behind something where you must subject yourself to foreign lines as to whatever rates they may impose."

Take the Pacific Coast-European Conference, which is an important trade, sailing from Oregon, Washington, and California to continental Europe. It is a big trade with a lot of lines in it. I think there are about 20 lines in it. I haven't a count. That is the Pacific Coast-European Conference.

There is one American carrier in that trade and they are not too regular.

If you say to American shippers, "We are going to legalize a device where, in effect, you must sign to not take advantage of any competition that is offered you with a group who are left complete freedom to set their own rates," and for all practical purposes they are all foreign lines, I do not think that is good policy, and I do not think anybody in the United States would say it is good policy.

Mr. ALLEN. If the bill said that, I might go along closer to the view expressed, but it seems to me that the bill says that there has been a condition in existence for a number of years and a trade has developed which is accustomed to that condition, and the bill says that that condition has been challenged as to its legality and the bill would provide an interim period during which it would remain a legal practice but subject to complete examination for the determination of permanent policy.

Mr. CRINKLEY. I should say this: That if a thing was wrong to start with and these lines have been able, in the slang, to get away with it, and somebody has finally brought them to book and proved by court decision not once but several times that they have been every day for the last 30 years violating United States law, I do not think it is consistent to say, "We have got to allow them some more time so that we can adjust this thing and we can think about it in the meantime and see what goes on."

Mr. ALLEN. Does that mean that you agree that it has been going on and has become an accustomed practice up until the present time?

Mr. CRINKLEY. It has in 62 trades. In 63 trades it has not.

Mr. ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. Suppose you develop that automobile situation a little more. Is it due to freight or due to some other factors?

Mr. CRINKLEY. I did not quite hear.

The CHAIRMAN. You mentioned the automobile situation. Is that due to freight rates or to what is it due?

Mr. CRINKLEY. That was a statement made by a representative of General Motors in an export association meeting in New York within the past 3 months. They had lost certain overseas markets because their freight charges had become so high.

The CHAIRMAN. That is kind of like the French designers of women's wear bringing this new garment into the country, something like that. They are bringing a car in here that is not built in America and the flair today is to purchase that car.

Mr. CRINKLEY. Yes.

The CHAIRMAN. Is it the freight rate or the flair for something new and different?

Mr. CRINKLEY. I am sorry, there. I am afraid that I did not make the point clear that I was seeking to establish. I was not comparing the fact that the United States used to export so many automobiles and now actually imports a great number which is true, incidentally, and has some background in the reasons you state there, very clearly so.

I am stating that insofar as the world of export markets is concerned, that the United States, from the day of the beginning of the automobile age up until just a few years ago, was the largest exporter of automobiles in the world in all the overseas markets.

The CHAIRMAN. Is it true that more automobiles are imported than exported?

Mr. CRINKLEY. I am not dealing with that phase of the question at all. I am saying America has lost.

The CHAIRMAN. Is it a fact that some of our great automotive producers have put plants in other countries that, therefore, eliminate the exporting of automobiles manufactured in this country?

Mr. CRINKLEY. Yes, sir. I am personally very, very concerned about that question.

The CHAIRMAN. But you have put that in the record as a part of this rate business. I wanted to develop it further.

Mr. CRINKLEY. I will try to do so.

The CHAIRMAN. You need do it no further because I think we agree that it is not exactly as you put it in the record the first time.

Mr. CRINKLEY. No, sir; I would not like to leave it that way.

The CHAIRMAN. Let us go ahead, then.

Mr. CRINKLEY. I wanted to say that for a great many years the United States of America was the greatest exporter of automobiles into overseas markets generally.

The CHAIRMAN. What did the freight rate have to do with it?

Mr. CRINKLEY. I will come to that in a moment. One of the chief participants in building up that huge export business, General Motors, has said this. I have not said it. I do not know their circumstances. They have said within the past 3 months that in certain over-

seas markets where they formerly had substantial business they do not have substantial business now because, as they put it, "high freight rates have killed us."

The CHAIRMAN. That is what I understood you to say. That is not your statement. That is their statement.

Mr. CRINKLEY. That is their statement.

My statement is that the conditions are changing so fast in foreign trade that there must be a certain amount of flexibility in freight charges, and I pointed out just one thing. We used to export a huge amount of automobiles. We led all the rest of the world put together, whereas in the last couple of years England, and with other European countries coming close behind, have far outstripped us and taken many of our export markets away, different in models and size.

The CHAIRMAN. That has nothing to do with economy.

Mr. CRINKLEY. Freight rates come somewhat into the picture, I judge, because General Motors made the statement.

The CHAIRMAN. Did they put a plant out of the country?

Mr. CRINKLEY. As I say, that is another side of the picture.

The CHAIRMAN. That is the plant that manufactured all the automotive parts for Germany in World War II, is it?

Mr. CRINKLEY. I expect so.

The CHAIRMAN. You brought this up. You charge it up to freight rates, unless we develop it.

Mr. RAY. Mr. Chairman.

Taking your figure, 62 conferences with dual-rate practices and 63 without, can you associate with each group the extent to which competition has existed? Is there a difference?

Mr. CRINKLEY. I do not have the detailed information in answer to that question but I believe that the Maritime Board has made a study in that respect and I believe that they can supply that information. I do not have it broken down into detail.

I do know that as to some of the conferences where they do not use the system there is some indication but I cannot specify in detail the information for you.

Mr. RAY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. Mr. Chairman.

Following Mr. Ray's question, it seems we could pursue it a little bit. We did develop a day or so ago that at least in one conference there was no indication when a dual-rate system was put in and now there is.

Can you draw any conclusions from the knowledge you have as to whether it can be shown that the dual-rate system has destroyed independent competition which already existed? Is there any direct relationship between whether a conference uses a dual-rate system and the outside competition?

Mr. CRINKLEY. I believe I can illustrate rather simply that that is so.

I would like to precede that remark by stating that I believe the conference contract system has been utilized more effectively in preventing independent competition in recent years than it has been in the destruction of independent competition. If it has been in effect a long time the effect is cumulative and gradually the independents

have been knocked out or scared out or anything else. But Lykes wanted to initiate service to southeast Asia some years back. They applied for membership in the conference and were not let in in that particular case but the conference was using the dual rate conference contract rate system. Lykes found that under those circumstances as a nonmember they could not get enough business to exist and so they complained about it very violently and bitterly to the Board.

My own comment about it was that when it got to that state the conference let them in and the question became moot.

I am just saying that the principal effect of the conference contract dual-rate system has been to prevent the development of independent competition generally.

Mr. MAILLIARD. I am interested in this denying admission to a company. A number of times it has been said in these hearings that a conference cannot do that.

Mr. CRINKLEY. That is the regulation that has been developed by the Maritime Board and is generally in force.

In that particular case I do not know what was behind the complaints. It might have been that proceeding in that direction might put some pressure on the Board to issue an order that they should be let in or that it be done by a practical consideration.

I think the latter was what helped.

Mr. MAILLIARD. Do you have other instances where conferences have denied admission?

Mr. CRINKLEY. There has been any number of those.

Mr. MAILLIARD. What is the procedure?

Mr. CRINKLEY. Usually what happens there is if it is an American carrier that is being denied, usually, or incidentally if it is a foreign-flag carrier, too, I believe a complaint is made to the Federal Maritime Board and they investigate the matter and, if they find that the newcomer is being kept out of the conference for improper reasons, they order the conference to admit it.

Mr. MAILLIARD. Are there any proper reasons for denying it?

Mr. CRINKLEY. I think so. I think the operator must be of sufficient means, for instance, to have a reasonable expectation that when he takes on other people's cargo he will have it fixed so that he can carry the ship to the destination, and so forth. There are certain conditions.

Mr. MAILLIARD. But assuming that it is a competent operator with adequate resources, they should not have been denied admission to the conference?

Mr. CRINKLEY. I would not think so if you are going to allow the conferences at all, and we are. We have legalized them fully. In essence, if you are going to let them exist they should not form an exclusive club because they do not own the ocean although many of the lines seem to think so.

Mr. MAILLIARD. It seems hard to get any statistical data. We have one side come in and give us a specific example. I believe the Gulf-Mediterranean was one where there was no dual-rate system. There was no competition but now that there is there are four competitors, and yet you can cite reverse examples.

Mr. CRINKLEY. I think the answer to that is that almost each case has some logical explanation if it would be developed.

Just after World War II all of the conferences did not immediately reestablish the dual-rate conference contract system they had used previous to the war. They were allowed to lapse. Some conferences immediately put that system back into effect and others did not.

In the period just after the war, for the first 2 or 3 years, almost all of the cargo that went to Europe, and I would say that probably included Mediterranean Europe, was Government cargo. Nobody had any money over there to buy even food, so that we had the relief administrations and they were the big shippers. There was practically no private business.

In about a year and a half or two and a half years after the war, trade gradually began to come in and the orderly marketing practices began to take place and shipping began to adjust itself accordingly, and it was along in that stage that still other conferences that had not used the system before put them in.

It can be very likely that in that previous period when practically everything was United States Government cargo of either the relief agencies, UNRRA, or MSTS or some division of that, that there would be relative stability but when it came to be a matter of every American that wanted to get into the export business might do so, then the conditions changed.

Mr. MAILLIARD. Incidentally, Mr. Crinkley, I would like to say that I think your statement is a very good one and contains some meat. Most of the argument that we heard from your distinguished colleague here was in very handsome language but did not have very much factual information.

I think you have given us some.

I would like to see if you could explain the reasons for some of these facts that you set forth.

Mr. CRINKLEY. I would be very glad to do that, sir.

Mr. MAILLIARD. With what appears to be exorbitant freight rates that you have listed here in certain trades on page 4, I would think there would be an ample opportunity for an independent like yourself to move into these trades. Why should it cost more to transport tobacco to LaGuaira than to Bombay?

Mr. CRINKLEY. Why should it cost more? It should not. There is a factor.

Mr. MAILLIARD. There must be a reason.

Mr. CRINKLEY. There are several factors that go into ratemaking. There are the characteristics of the commodity, its weight compared with its measure, how much room it will take in the ship. There is a susceptibility to damage as to its value so that if there is a loss the carrier is faced with the increased liability and there are the other considerations, the general voyage expense that is involved.

For instance, if I am going to take a ship and send it 15 days away, I have 15 days' expense to charge against the cargo that is in that vessel. If I am going to send something that may be 5 or not over 10 days away, I have a much much lesser voyage expense than I would have in the other case so that, while there might be some variation in the factor, let us say, on leaf tobacco going to Bombay as compared to Venezuela, it is my own guess that the volume is not a determining factor there.

I think altogether it is a matter of competition. You have \$2.65 to Bombay and you have the equivalent of a \$5 a hundred-pound rate right downstairs to LaGuaira.

MR. MAILLIARD. What about your own freight rate as an independent? Would you show similar variances on short hauls as against long hauls in the same commodity?

MR. CRINKLEY. Our position has been this in a general way with respect to rates: Where we have tried to operate and where the conference contract dual-rate system was being used, it forced a very unnatural and unsound choice upon the shipper. He had to content himself with the sailings we could provide.

For instance, to the Far East, there are 25 lines there and if most of them have more than 1 sailing a month there might be 35 or 40 sailings a month.

The best we could do would be two sailings a month.

Obviously anybody with a need for more sailings a month than that cannot use us, would have to pay a higher price to conference lines unless dual-rate contracts were signed.

It has been necessary for us to offer an inducement. We have considered soundly that the conference contract system was unlawful but it was permitted. It has a differential between contract and non-contract rates so that as a competitive measure against that we have generally tried to quote a differential under that as an offset.

On the other hand, we have advertised to everybody in the world that will read advertising, both here and abroad, that with respect to freight rates we are prepared any time to sit with the shipper and work out with him to see whether it may be possible for us to quote a freight rate which will enable him to do business.

At times we have had to decline an adjustment of rate because the rate required meant that the carrier would carry at a loss in order that the shipper might make a profit, which is no sense.

At other times, we have been able to show very great reductions.

I will give an illustration, which I think will answer your point. The rate on leaf tobacco before the war to German points was 70 cents or maybe 80 cents but let us call it 90 cents or one dollar per hundred pounds. In 1946 and 1947 the conference rate on tobacco to those places was \$3.20 a hundred pounds. That was a wartime rate which had never been changed.

The Government of the United States decided to ship 60,000 hogsheads of tobacco to Germany to be utilized for employing German workmen in German factories in breaking the tobacco black market. I guess we know what that business came to be. That was 30,000 tons of tobacco. The men that were administering that program decided that that rate was entirely too high. They tried to get some reduction from the conference, as they told me, and then they came to us and with American ships, no subsidy, and a very satisfactory profit, we quoted a rate and carried a substantial part of it, not all, at \$2.25 a hundred. That is 95 cents a hundred pounds less than the conference. We made money.

Incidentally, the taxpayers of the country saved \$600,000 on that particular movement.

So somebody said, "Would you way undercut the conference rate?"

My answer would be, "Sure. Their rates are entirely out of reason and if the rate that is needed to do the business would show us a profit, why not?"

Mr. MAILLIARD. The only specification you have given in these figures are cotton and leaf tobacco. In how many of these trades do you operate?

Mr. CRINKLEY. We operate from the United States North Atlantic ports to the Mediterranean as a part of our round-the-world route and our vessels go on through Suez, via India, the Straits and up to the Orient and Japan back to California and back through the Panama Canal to Puerto Rico and New York.

What I intended to say and I think I did was that there has been independent competition in those trades.

Mr. MAILLIARD. So that of these examples you give, Bombay, both on the cotton and leaf tobacco, is the only place you competed or do you compete to Yokohama?

Mr. CRINKLEY. Let me answer that question fairly.

We do not operate from United States Gulf ports to India. So in the Bombay, that is not the case.

Mr. MAILLIARD. Are you in competition in these commodities on any of these routes?

Mr. CRINKLEY. Yes, we operate from United States North Atlantic ports, which includes Hampton Roads, which is a great port for the export of tobacco.

We operate from there through the Mediterranean and on east-bound around the world, so that we do compete on Bombay there and to practically no extent to Japanese ports, but what I propose to say is that from United States Gulf ports to continental Europe and to the Mediterranean there is independent competition. And that shows itself up in the more reasonable freight rates.

Mr. MAILLIARD. What would be the explanation, for instance, here where on cotton conference rates it is \$2 to Japan and \$2.55 is to Bombay but on tobacco it is \$4 to Japan and \$2.65 to Bombay?

Mr. CRINKLEY. Well, to be fair, the answer to that question would be this: In shipping you have two factors. You must consider what is the weight capacity of the vessel and the other is the space capacity of the vessel.

One ton of cotton will occupy from 80 to 100 cubic feet in a vessel. That is supposed to measure 80 cubic feet per ton. That is the documentation it takes in the ship. That is a ton of cotton.

A ton of tobacco measures 129 cubic feet. In other words, a measurement ton is 40 cubic feet so that cotton is 2 cubic tons per weight and tobacco is 3 and a fraction measurement tons compared to 1 weight ton so that that must be a factor.

Mr. MAILLIARD. Yes, but to Bombay the rate on cotton and the rate on tobacco is almost identical, 10 cents difference, but to Japan it is double. That puzzles me.

Mr. CRINKLEY. I can offer an explanation, I think. That is, that at the time that the cotton rate was set at \$2, at that time there was independent competition at times between Gulf ports and Japan to get a \$2 rate on cotton. There is not much of that competition there. Most of the cotton is moving out under Government financed programs

and by one way or another is being confined to American and Japanese ships which rather restricts the market.

Mr. MAILLIARD. Is there no tobacco going to Japan?

Mr. CRINKLEY. Yes, but tobacco would not move in sufficiently large lots to, for instance, draw tramp competition as cotton at times does.

Mr. MAILLIARD. I am still confused as to why the rate to Japan should be lower on cotton than it is to India, whereas the reverse is true on tobacco.

Mr. CRINKLEY. I am not the man that can explain that.

I am citing conference rates there.

Mr. MAILLIARD. What are your rates in these trades?

Mr. CRINKLEY. We do not have operations in some of those trades. On the last cotton that my company arranged to carry to Japan our rate was \$1.80 a hundred. I have not carried any tobacco.

Mr. MAILLIARD. Which is just under the conference rate.

Mr. CRINKLEY. The conference rate was then \$2. It has been all sorts of things. It has been shifting around.

Mr. MAILLIARD. I wish I could get at what I am trying to find out but I do not know enough about it to ask the right questions.

The CHAIRMAN. Let me ask you a question along that line.

This big movement of tobacco which you mentioned was on one of your regular trade routes?

Mr. CRINKLEY. Yes, sir; between United States North Atlantic ports and continental Europe. At that time we operated American-flag service in that trade from Norfolk, New York, and with fortnightly service. We did not carry all of that.

The CHAIRMAN. Where did you unload this shipment?

Mr. CRINKLEY. In Bremen. That was a number of ships.

The CHAIRMAN. You have a regular scheduled route to Bremen; do you?

Mr. CRINKLEY. We did at that time.

The CHAIRMAN. But you do not now?

Mr. CRINKLEY. No, sir.

The CHAIRMAN. That makes a difference, does it not?

Mr. CRINKLEY. I do not know what difference it makes in that particular situation.

The CHAIRMAN. Well, you had a big movement and you carried it in.

Mr. CRINKLEY. There is not that connotation. We started the service in 1931.

The CHAIRMAN. But you do not furnish any dependable service where you give these fancy rates.

Mr. CRINKLEY. We furnish as dependable service as any steamship line in existence.

The CHAIRMAN. He was asking about the variances.

Mr. CRINKLEY. We do not operate in every trade but in the trades where we operate our service is as dependable as that of any of our competitors.

The CHAIRMAN. Do I understand you to say that it was a tramp movement that moved in volume of which you spoke?

Mr. CRINKLEY. Are you talking about the leaf tobacco?

The CHAIRMAN. You mentioned cotton.

Mr. CRINKLEY. I thought his questions to me on cotton to Japan and Indian were theoretical. We do not have regular established service and never had from Gulf ports to Japan and/or to India.

The CHAIRMAN. But you made a special trip?

Mr. CRINKLEY. At times we have had tramp business from the Gulf to Japan but we have regular line business and tramp business, which are different things.

The CHAIRMAN. But where you made the differential in price you do not operate?

Mr. CRINKLEY. That was a regular service.

The CHAIRMAN. So that the man who is selling abroad and depending on shipping cotton depend on you today?

Mr. CRINKLEY. We operated from 1913 until 1955 with fortnightly service, which is a fairly good record as concerning anybody.

The CHAIRMAN. But you do not operate there now?

Mr. CRINKLEY. At this particular time we do not from Norfolk as a regular thing.

Mr. PELLY. Mr. Crinkley, I think you have convinced me of one thing in favor of this legislation.

It is going to take me 2 years to figure out some of those freight rates and the reasons for them. Therefore, I think that you have mentioned one point that has not been brought out before. I would like to ask you one thing.

Are the financial statistics on the steamship companies that operate on these conferences pretty well public property? Do they publish their statements?

Mr. CRINKLEY. No. Remember again that if we would say there are approximately 400 conference lines operating in and out of United States ports, that 41 are American.

Mr. PELLY. I really referred to the 41 American.

Mr. CRINKLEY. Those that are publicly owned, their statements are readily available, those whose stock is listed on one of the exchanges. As to those not publicly owned, they are not published.

The CHAIRMAN. Are they published with the Maritime Administration?

Mr. CRINKLEY. They are filed there.

The CHAIRMAN. They have to file a statement for the purpose of recapture.

Mr. CRINKLEY. That is as to the subsidized lines. If they are not getting the subsidy, they have to file in connection with the accounting practices.

The CHAIRMAN. They would be available to this committee?

Mr. CRINKLEY. Yes.

Mr. PELLY. You know pretty well how successful or unsuccessful your competitors are, do you not?

Mr. CRINKLEY. In a general way, not right down to the point, but in a general way.

Mr. PELLY. Yesterday, I think it was your counsel who said that from what he read in the papers that exorbitant profits were being made by the steamship lines. Do you think they are?

Mr. O'CONNOR. I said foreign lines.

Mr. PELLY. You were referring to foreign lines? You mentioned United States.

Mr. O'CONNOR. Not as to profit. Only foreign lines.

Mr. CRINKLEY. I raised in my statement the point that you have a situation where freight rates are calculated to generally cover the American cost. Nobody denies that.

I say they do not fix any rate based on a cost plus a certain margin of profit but the whole level is fixed generally where it will cover the high cost of operating.

If you get a lost cost operator in there he shares in the rate at that upper level and he has a gold mine.

Mr. MAILLIARD. Will you yield at that point?

Mr. PELLY. Yes.

Mr. MAILLIARD. You would not be able to operate without rates generally applicable to American costs, would you?

Mr. CRINKLEY. We have been doing it. But the question is a good one and I would answer it this way: If freight rates were always based on a recognizable and definite standardized cost plus a reasonable profit margin, if that is how rates were quoted we could not compete one-half a day with the majority of the foreign operators. It is evident that rates are not on that basis. They are on a basis that we can quote lower rates, and make money usually.

Mr. MAILLIARD. So that the conference system is pretty essential to our maintaining an American merchant marine even to the extent that we are able to maintain it.

Mr. CRINKLEY. I would not say that necessarily. Why do we subsidize American lines? Let us ask the question. To put their cost on a comparable factor with foreign lines. All right, then. Any rate that a foreign line can quote profitably, and none of them are in the business for anything except profit, an American subsidized line can quote with profit.

Mr. MAILLIARD. What about a nonsubsidized line?

Mr. CRINKLEY. I say again if costs were based on actual cost factors they could not compete.

Mr. MAILLIARD. But could no the foreigner drive you out of business if there were not some agreement to have compensatory rates?

Mr. CRINKLEY. I do not know whether I am repeating or not but if they operate on the basis of their lower cost with a reasonable profit, they could run us out of the water sure.

Mr. MAILLIARD. Would they not be likely to do that if there were not some conference system? Surely they like to get as much profit as they can out of it, but they allow us to live in the process, it seems to me.

Mr. CRINKLEY. I really could not say. I do not think so. I think the conference system tends to freeze that situation more than otherwise.

Mr. MAILLIARD. If there were no conferences at all and American shipping were wide open to foreign competition and even recognizing that part of the American merchant marine is subsidized, but with the subsidy gone, very substantial obligations that are not binding on their foreign competition, would not we be likely to be in pretty bad shape.

Mr. CRINKLEY. If the American lines were subsidized so that their cost factors were the same as the foreigners, what would happen? I do not imagine for one minute that foreign or American people who have investments of dollars in floating equipment are going to look for situations where they are going to carry cargo at huge losses.

The only time you have the instability in rates that comes whether they have a criticism or not is when there are far more ships to move cargo than cargo.

Mr. MAILLIARD. Or vice versa.

Mr. CRINKLEY. Then vice versa the shipping rates would be high.

Mr. MAILLIARD. As a result, conferences are of some value to the American shipper as stabilizers.

Mr. CRINKLEY. Congress said, "There is some value to these fellows in stabilizing rates and the sailings but we are not going to allow them to destroy independent competition."

If that would be true, they would have allowed them to use fighting ships. "We are going to allow them to exist and suspiciously watch them," Congress said.

Mr. MAILLIARD. When we come to the question of whether the dual-rate system, not misused is per se damaging, it seems to me it is a question of whether you are going to protect yourself against the low-cost tramp operator who is going to move into the more profitable trades when circumstances permit and cut the rates which he can afford to do on that basis. If he can wander all over the world and simply skim the cream off of a current trade and make what he can and get out, it seems to me that that is the kind of competition that a properly used dual-rate system is designed to meet. If it is improperly used and is actually in fact discriminatory that is another matter and a matter, I think, for consideration by the Federal Maritime Board.

Mr. CRINKLEY. I would like to comment on that by saying this: I do not think it is reasonable to look on the shipping picture that if you did not have this restrictive conference contract system that there would be lines, all of the existing lines, and many of them have built special ships for special trades, most of them have large investments, that all at once they are going to become totally irresponsible with that tremendous investment.

Mr. MAILLIARD. You misunderstood. I was not suggesting that. I was suggesting that if there were not some way of maintaining stable rates that are neither excessive in times of reduced number of bottoms as against cargo or the other way around, it would be possible, it would seem to me, for a low-cost tramp operator to come in and skim off the cream at what would be noncompensatory rates to those with larger investment in ships and facilities, and so forth, to the destruction of the service available to American trade.

Mr. CRINKLEY. It is a very involved question.

The CHAIRMAN. Let me ask you this. Is that not what we are going to have to go into when we have the general study? Does that have any direct bearing on whether we should do this or should not do this as to the matter before us?

Mr. MAILLIARD. It does only to this extent, Mr. Chairman: not that we are trying to establish here whether that is a fact but if that is a real risk, I think it is a very strong argument in favor of stopgap legislation.

The CHAIRMAN. We know that generally they move in and out. That has been the history of the thing, has it not? Has that been the history?

Mr. CRINKLEY. No, sir.

The CHAIRMAN. You are the only man that ever told me that. I have been around here all these years and I have been told that this operation moves in and moves out.

Mr. CRINKLEY. That is not right, sir.

The CHAIRMAN. Why did you come out of the Hamburg run, then?

Mr. CRINKLEY. Because we have always in that trade used chartered ships. We did not have enough money to own all the ships so we chartered them.

The CHAIRMAN. When it was lush you went in there and when it receded you got out of there?

Mr. CRINKLEY. No, sir, Mr. Bonner.

The CHAIRMAN. I have to finish these hearings.

Mr. CRINKLEY. We started in 1931 during the worst depression this country ever had.

The CHAIRMAN. I appreciate your testimony, but I have to have Mr. Hoyt Haddock now.

Thank you very much.

We are going to finish up this evening and I want Mr. Haddock, who speaks for labor, to make a short statement. Then we are going to take a recess.

STATEMENT OF HOYT S. HADDOCK, CODIRECTOR, AFL-CIO, LABOR-MANAGEMENT MARITIME COMMITTEE, WASHINGTON, D. C.

The CHAIRMAN. I am sorry to have detained you so long, Mr. Haddock. Go ahead.

Mr. HADDOCK. My name is Hoyt Haddock, executive secretary of the A. F. of L.-CIO Maritime Committee.

Mr. Chairman, we appear here in favor of H. R. 2751 and its companion bills. We do not think it is necessary to discuss the merits and demerits of the dual-rate system or the conference system because that is not what I understand to be under consideration here today, and it has been discussed by people who are more familiar with it and more able than I in that field, in any event.

The conference system has been in effect since 1860 and the dual-rate system since 1877. We feel that that is argument enough to continue the dual-rate system until the Congress has had a chance to look at it and determine whether or not it is a good or a bad system or whether there is a better system.

Now, we think, basically, that it has served a good purpose. We can certainly be mistaken in that and only a study, a thorough study of the matter, we think, will bring out the facts.

While this bill is directed at the dual-rate system, I assume and I would certainly respectfully suggest to this committee that they study the conference system and, within the context of that, the rate system and the discriminatory rates that are practiced today by the unregulated companies and perhaps even by some of the conference companies.

There are certainly two fields in which discriminatory rates exist. One is in the field of permitting companies to set different rates for shippers of the same type of goods on similar routes. The other is the question of permitting companies shipping out of the United States or giving a service out of the United States to charge one rate

and when giving the service from another country to charge a different rate, which would assist the shipper in that area to compete against the United States shipper, so that it seems to me that those types of things certainly ought to be investigated and I am hopeful that this committee is not going to think that this dual-rate system or the conference system or the discriminatory rates are the real problem in this industry. The real problem in this industry is that the American-flag ships are rapidly being driven out of the trade and we are now relying almost completely on foreign-flag ships in carrying our goods.

It seems to me that we may be grappling here with a slippery pig and let the real pig get away in the form of the American merchant marine, which is the real problem.

I would hope that when you get into the study that you will go into the whole question as to why the American-flag merchant marine is now carrying only about 14 percent of our cargo.

Mr. Chairman, that completes my statement.

The CHAIRMAN. You wish to file a further statement?

Mr. HADDOCK. No. When this question comes up for study, we will want to discuss certain things specifically.

The CHAIRMAN. I realize the situation here now which does not give you sufficient time but if you desire to revise and extend your remarks in this record, that will be your privilege.

Mr. HADDOCK. Thank you, Mr. Chairman.

(Letter follows:)

LABOR-MANAGEMENT MARITIME COMMITTEE,
Washington, D. C., June 6, 1958.

The Honorable HERBERT C. BONNER,
Chairman, House Merchant Marine and Fisheries Committee,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN BONNER: The Labor-Management Maritime Committee desires to go on record with your committee in support of H. R. 12751.

Our committee is an organization whose membership includes the National Maritime Union of America, AFL-CIO; the American Pilots Association; and six major steamship lines as follows: American Export Lines, Inc.; Grace Line, Inc.; Lykes Bros. Steamship Co., Inc.; Moore-McCormack Lines, Inc.; United States Lines Company; and Farrell Lines, Inc.

The work of our committee in the field of labor-management includes the support of such legislation as is commonly acceptable and deemed to be in the interest of the American Merchant Marine. We are pleased to advise you and your committee that H. R. 12751, introduced by you, is such a legislative proposal.

We have followed closely the testimony of those who have appeared before the committee. We believe the case for the adoption of the measure has been adequately made. We are in general agreement with the case presented by the proponents of the legislation. It is not the purpose of this presentation, therefore, to outline the details so ably presented by those favoring the measure.

We are firmly convinced that any loss of the principle involved in the dual-rate system may lead to rate wars. Such rate wars may mean the destruction of United States flag shipping. We believe that the dual-rate system is an important device which can be used to prevent rate wars.

If the conference system falls, the resultant rate wars with attendant reduced income, may well place in jeopardy the ability of many lines to meet ship and fleet replacement obligations. If such a result obtains, and we firmly believe it can, the loss to commercial waterborne transportation and its effect on shippers in the United States foreign commerce will be only one facet of the problem. The other is the fact that any weakening of our merchant shipping has a direct effect on the ability of the American Merchant Marine to serve as a fourth arm of defense.

It is noted that the language of H. R. 12751 (as well as the companion bills), does not present a permanent answer to the problem. Rather, it makes provision for sustaining the dual-rate system to June 30, 1960. This would provide current stability and permit both the Congress and the industry sufficient time to study what permanent solution seems most feasible in the circumstances.

We thank the committee for the opportunity of submitting this joint position representing both labor and management members of our organization. We respectfully request that this letter be entered into the record.

Respectfully,

EARL W. CLARK.

HOYT S. HADDOCK, *Co-Directors.*

The CHAIRMAN. Mr. Gardner, I understand you want to file a statement from Mr. Alexander. I did not have time to give you a verbal hearing.

STATEMENT OF WARNER W. GARDNER, WASHINGTON ATTORNEY, AMERICAN PRESIDENT LINES

Mr. GARDNER. I have no desire to be heard verbally.

Mr. A. A. Alexander, vice president of the Eastern Division of the American President Lines has been in attendance at these hearings but was required last night to return to New York and has asked your permission to file his statement.

The CHAIRMAN. That will be filed in the record at this point.
(The statement referred to follows:)

STATEMENT OF ARTHUR A. ALEXANDER, VICE PRESIDENT, EASTERN DIVISION,
AMERICAN PRESIDENT LINES, LTD., IN SUPPORT OF H. R. 12748, 12750, 12751

INTRODUCTION

Mr. Chairman, my name is Arthur A. Alexander. I am vice president of the Eastern Division of American President Lines, Ltd.

The American President Lines and its predecessor, the Dollar Line, have operated American flag services in the off-shore trade since World War I. Since 1921 we have regularly operated a round-the-world service except for the war years. Our operations have been prominently identified with the Orient trade for several score years. Forty of our ships, all flying the American flag, serve 50 ports throughout the world.

Since 1920 (with the exception of a period during World War II when I served the Combined Shipping Board and there helped to organize a system of joint control with the British Ministry of Transport covering the movement of essential cargoes from the United States to Allied and neutral nations), I have been employed continuously by the Dollar Line and American President Lines. During these last 38 years, I have served in almost every phase of our shore-based activities. Frequently my work has required me to participate in the activities of various steamship conferences. For several years I represented our company in major freight conferences many of which were domiciled in New York. I believe that American President Lines, because of its round-the-world and other services, belongs to more conferences than any other American line.

Ours is a 100 percent American flag operation. We neither charter, operate nor have any interest in any foreign flag vessels. We build and repair our ships in American yards with American labor and man them with American crews. We comply strictly with all Coast Guard and Federal Maritime Board rules and regulations. In cooperation with the Maritime Administration, we have embarked on an enormous ship-replacement program.

No one knows better than this committee the extent and seriousness of our program to replace and upgrade our fleet with modern tonnage built in American yards. I say this because your committee has recently considered and reported favorably a bill which, if enacted, will enable us to construct the largest, finest and most expensive superliner regularly plying Pacific waters.

As you know, the Shipping Act of 1916 authorizes American and foreign-owned steamship lines serving United States ports and engaged in foreign com-

merce to enter into agreements, or conferences, with each other for the purpose of stabilizing rates and services, provided the Government's regulatory body (the Federal Maritime Board) approves the terms and conditions of the agreements. We and most other major American and foreign lines are members of many such conferences. If we were not, or if these conferences fell apart for any reason, the low-cost foreign lines (practically of whom are now members of our conferences) would engage in ruinous rate wars which could only result in the destruction of the privately owned American flag fleet. In the process, the stabilized reasonably priced and regularly scheduled services now offered American importers and exporters by American flag vessels would vanish, too.

Therefore, our concern with any development which might jeopardize, weaken, undermine or place in doubt the validity of conferences is understandable. Operating in the 100 percent American way we do, having incurred the enormous long-term commitments we have—all predicated so largely upon stability created by effective conference regulation of rates, services and practices—it is of great importance that any development placing in doubt the legality of long-time, well established conference practices be met head on and promptly solved.

I welcome this opportunity to appear before you today to testify in support of H. R. 12751.

THE SUPREME COURT DECISION

On May 19, 1958, the Supreme Court handed down its 6 to 3 decision in the so-called *Isbrandtsen-Dual Rate* case.

At the outset, let me hasten to point out that I am not an attorney. However, I have read the majority and dissenting opinions carefully. To me and other shipping men who have the responsibility of operating their companies' business in accordance with the letter and spirit of the law, at a profit if possible, the question now confronting us is simply this: "What is the meaning and effect of the Supreme Court's decision, and what must we do to comply with it, or, if need be, to obtain appropriate remedial legislation?"

Despite the fact that only a few weeks have passed since the decision was handed down, it is already obvious that even among able lawyers there is considerable difference of opinion as to the meaning of the decision, its probable effect, and the need, if any, for permanent remedial legislation.

However, since varying interpretations of the decision can and may be argued and advanced in the months to come, there is an obvious need now for something which will maintain the status quo until all concerned have had a sufficient opportunity to study the decision and decide whether permanent legislation is needed.

That need can be met, I submit, by enactment of H. R. 12751.

Turning now to the pending bill, H. R. 12751. If enacted in its present form, this statute will amend section 14 of the Shipping Act of 1916 so as to prevent anything in that statute from being construed or applied to make unlawful any dual-rate contract arrangement in use by the members of a conference on the effective date of the enactment of H. R. 12751, providing the conference is organized under an agreement approved by the Federal Maritime Board under section 15 of the Shipping Act. However, between the date of enactment of H. R. 12751 and June 30, 1960, when by its terms it ceases to be effective, the Federal Maritime Board may disapprove, cancel, or modify any or all such existing dual-rate contract arrangements in accordance with provisions of section 15 of the Shipping Act of 1916.

Thus, Mr. Chairman, H. R. 12751, if enacted, will remove all doubts cast by the Supreme Court upon the legality of all existing dual-rate contracts except the one proposed by the Japan-Atlantic and Gulf Freight Conference, unless and until the Federal Maritime Board disapproves or modifies such contracts in accordance with the provisions of section 15 of the Shipping Act.

This legislative guaranty against precipitous and unjustified condemnation of all dual-rate contract arrangements will afford all interested parties ample opportunity to study the meaning and effect of the Supreme Court decision and to conclude whether permanent legislation is needed and justified.

In the meantime, the doors of all conferences will remain open. Nonconference lines which are willing and able to meet the reasonable requirements of present members will continue to be invited to join the conference. Furthermore, as in the past, there will be no discrimination whatever as between shippers who are signatories to dual-rate contracts. Whether large or small, they will be charged the same rates.

Before concluding my remarks permit me to take this opportunity to share with you my observations on two matters perhaps not directly material to the bill under consideration but, I believe, of vital importance to anyone who seeks to fully understand what is truly involved in the controversy between the one unregulated nonconference operator opposing this bill and other steamship lines. First, this unregulated carrier argues in no uncertain terms that evil, cartel-minded foreign lines control all conference activities to the detriment of the American merchant marine. Nothing could be further from the truth. One simple answer to the argument lies in the fact that all—except perhaps Isbrandtsen's counsel—concede that without the stability of rates and practices which result from the regulated conference system authorized by the Shipping Act of 1916, privately owned American flag fleets would be at the mercy of low-cost foreign operators.

Prior to the enactment of the Shipping Act of 1916, the tremendous advantages possessed by foreign maritime powers prevented the American flag from flying over all but about 2 lines operating in the Atlantic and 1 in the Pacific. Thanks to the statutory authorization of conference activity in the Shipping Act of 1916, and its implementation and extension by the Merchant Marine Act of 1936, today's strong American merchant marine had little to fear from the low-cost foreigner. Second, in trying to give the impression indirectly that "the independent way" is the only salvation available to protect true, 100 per cent American-flag operators from vicious, underhanded practices of evil foreigners, this carrier would have this committee overlook the fact that Isbrandtsen itself, throughout its history has operated many foreign vessels in competition with the American flag it now claims to fly in its services. Third, by resorting to slogans designed to arouse emotions and dispel reason, this opposing carrier's counsel would like this committee and the Congress to overlook the fact that in all of the millions of transactions which have been placed under the contract rate system over the past 42 years, complaints by importers and exporters who are parties to such contracts have been infinitesimal. You can count them on the fingers of one hand. The record before the Federal Maritime Board is clear on this point. Fourth, when ship tonnage was scarce in relation to cargo offerings, this unregulated independent did not hesitate to charge shippers higher rates than those then charged by the conference lines.

In conclusion, Mr. Chairman, permit me to thank you and the other cosponsors of this bill for introducing it and promptly scheduling these public hearings. Only by its enactment this session can we be sure of avoiding the chaotic conditions which otherwise will beset importers, exporters, and American-flag services and cause irreparable injury to the foreign commerce of the United States.

The CHAIRMAN. This afternoon, Mr. James, we are going to hear you.

We are going to hear from the Associated Latin American Freight Conferences.

Then we are going to hear the Maritime Board, and that will conclude this matter.

Before adjourning, I will say that the committee has learned with a great deal of sadness of the passing of that outstanding gentleman, Mr. Bruce McNamee, of AMMI. All of us were very fond of Mr. McNamee. He was faithful to the cause of American-flag operations. It is regretted that the chairman of the committee cannot attend his services this afternoon. We pay our respect formally in this manner to his distinguished life and career in the merchant marine service.

Mr. ALLEN. Mr. Chairman, does that conclusion of yours personally come from the fact that we are going to have hearings during the time of services?

The CHAIRMAN. Yes, sir. We will have to have hearings.

Mr. ALLEN. May I add my thought to what you have said and express my regret at the passing of Mr. McNamee, who was not only a very fine gentleman and a fine supporter of the American merchant marine but one of my dearest Washington friends.

I also will regret that you wish to go ahead with the hearings, so that I will not be present to do him one last honor.

Mr. MAILLIARD. Mr. Chairman, with the permission of the Chair, I think I might leave the hearings this afternoon in the capable hands of my seniors and represent you at Mr. McNamee's funeral this afternoon.

The CHAIRMAN. I would be glad for you to do that.

Mr. PELLY. Mr. Chairman, I also am very appreciative that you mentioned our sadness in the loss of our good friend, Bruce McNamee, and I know that you spoke for all of us here who have very great respect and admiration for him. I am glad you did so.

The CHAIRMAN. I would recess the committee over until Monday morning but we have a great backlog of work that we just must finish and if I might say, incidentally, I have many other matters that I personally have to attend to. I try to give the time that is necessary to my responsibility as chairman of this committee and I hope you, in the industry, will understand why we have to continue the hearing this afternoon.

Of course, I will understand the absence of those who, I hope, will go to Mr. McNamee's services.

With that, the committee now stands adjourned until 3 o'clock in memory of Mr. McNamee.

(Whereupon, at 1 p. m., the committee adjourned until 3 p. m., this same day.)

AFTERNOON SESSION

The hearing was resumed at 3 p. m., pursuant to the recess.

The CHAIRMAN. The committee will come to order.

The committee has been notified by the United States Chamber of Commerce that a statement will be made to the committee for the record on the bill under consideration.

(The statement referred to follows:)

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D. C., June 6, 1958.

HON. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: The Chamber of Commerce of the United States supports H. R. 12751 and H. R. 12758 which, for a temporary period, would maintain existing dual rate contract arrangements in shipping rate conference agreements approved by the Federal Maritime Board.

This would permit a thorough study of the dual rate contract system which the Supreme Court has attacked.

Agreements among carriers in matters of rates and service has been long established as the method of controlling competition in ocean transportation. Conferences are a protection both to shippers and the operators. Shippers are benefited by stability and uniformity of rates, regularity of service, economy in the cost of service and equality of treatment. Operators benefit from the stability provided their operations, lower operating costs and greater security in their trades and for their investments.

The dual rate contract system has long been a feature of many conference agreements. Any abrupt abandonment of this system would seriously affect the continuance of the agreements, disrupt rate structures, and threaten the dependability of services.

We request that you make this letter a part of the record of the current hearings in this regard.

Cordially yours,

CLARENCE R. MILES.

The CHAIRMAN. The committee has been advised that Mr. Bartle, with the Lykes Bros. Steamship Co., would like to make a short statement at this point.

STATEMENT OF TOM BARTLE, LYKES BROS. STEAMSHIP CO., INC.

Mr. BARTLE. My name is Tom Bartle.

Mr. Chairman, yesterday Mr. O'Connor filed a letter and it was inserted in the record that said, in substance, that we had in 1947 filed a complaint with the Federal Maritime Board against the contract system and the dual-rate system of four conferences and that, to the extent of such complaints, Lykes was in agreement with Isbrandtsen as being opposed to the dual-rate system of ratemaking.

We wish again to state that for the third time this question has been misrepresented.

What I said on June 3 and what Mr. Cocke said the next day is still true. We have been and are now very much in favor of the dual-rate system. The complaint that he listed in the letter ran wholly and entirely to and against the refusal or perhaps it best be said the unnecessary delay that was taking place in the conference accepting our application for membership.

We filed the complaint with the Federal Maritime Board after giving the conference due time, as we thought it was enough time, to accept our membership application, and the moment the Board set the matter for hearing, we were admitted by the conference to full membership and the case was automatically withdrawn.

I cite here in his reference 13, "In furtherance of said combination of conspiracy, respondents have unjustly excluded Lykes from participation and membership in said conference."

And again I emphasize that we made no complaint whatsoever against the dual-rate system.

We merely filed a complaint as to the delay in our application for membership being acted upon.

I would also, Mr. Chairman, say that the Maritime Commission will confirm that there is not a single case of any importance—I say there is not a single case where an applicant, a justified applicant, a legitimate company in operation, has ever filed for membership in an existing conference but that the Maritime Commission sees that his application is accepted. There is no monopoly because he is accepted. Of course, he must qualify as being a worthwhile operator and eligible for acceptance but to that extent there is no monopoly.

I say again, Mr. Chairman, we are heartily in favor of H. R. 12751.

If you will permit us to do so, we should like to file a letter next week that will go in more detail to the question he raised in that letter or in confirmation of what I have herein said.

The CHAIRMAN. All right.

Mr. BARTLE. Thank you.

The CHAIRMAN. We will now have Mr. James, representing the West Coast Conferences.

**STATEMENT OF LEONARD G. JAMES, GRAHAM, JAMES, & ROLPH,
SAN FRANCISCO, CALIF.**

Mr. JAMES. My name is Leonard G. James, and I am associated with the law firm in San Francisco of Graham, James, and Rolph, Mr. Chairman, that has the pleasure of representing a group of conferences on the Pacific Coast, which include the much maligned Pacific Coast-European Conference, the Pacific-Straits and Pacific-Indonesian Conferences and the Pacific Coast-Latin American Conferences of which there are 10; and, if it is agreeable with you, Mr. Chairman, I will hand the particular names of those to the reporter to write into the record.

The CHAIRMAN. It may be inserted at this point.

(The names referred to follow:)

PACIFIC COAST-LATIN AMERICAN CONFERENCES

Canal-Central America Northbound Conference
Canal-Central Amreica Northbound Conference
Capca Freight Conference
Colpac Freight Conference
Pacific Coast-Caribbean Sea Ports Conference
Pacific Coast-Mexico Conference
Pacific Coast-Panama Canal Conference
Pacific-West Coast of South America Conference
West Coast South America-North Pacific Coast Conference
Pacific Coast-River Plate Brazil Conference

Mr. JAMES. The purpose of my coming here from the coast is to support H. R. 12751 and do what I can to urge that that be passed. I think that it will operate to help in a great measure to stabilize the situation which has been created by the recent decision of the Supreme Court.

I also would like to say, Mr. Chairman, that we believe the general investigation which you have announced and alluded to a number of times is long overdue and we were delighted to see your announcement. We hope that that investigation will go forward very promptly and we believe that your committee will find that there are areas involving regulation of international shipping that cry for your attention.

We believe that the Shipping Act of 1916 was a very well thought-out and designed piece of legislation. But we do believe that the time has come to take another look at it and we believe that you will find that there are situations existing now where the intent of Congress with respect to regulation of ocean shipping in the foreign trades should be clarified not only for the benefit of the shipping public but also for the benefit of the carriers themselves, so that we may understand what our requirements are more clearly than we do today.

I particularly would like to take this opportunity to direct a few replies to some of the statements and misstatements of fact made by the Isbrandtsen Co.

The witnesses for the Isbrandtsen Co. have taken occasion to refer repeatedly to the Pacific Coast-European Conference. That is one conference on the coast that I have the privilege of representing.

Among other comments made with respect to that conference was the comment that there is no outside competition in that trade.

I believe that Mr. O'Connor made the remark that there is no outside competition in any of the trades on the Pacific coast.

We represent a number of them. There is outside competition in virtually all of those trades and it is increasing. As far as the European Conference is concerned, the European trade, I guess outstanding among the nonconference competition in that trade is the Isbrandtsen Co. itself which testified here that there was no outside competition in that trade.

The Isbrandtsen Co. has been operating in the Pacific coast-European trade almost since the war. I think, as you may know, after the war Isbrandtsen originally started their around-the-world service westbound. Shortly they reversed that and operated eastbound and ever since they did that, which, as I recall, was in 1948, they have operated in the trade from the Pacific coast to Europe. Their service goes from ports in California and the Northwest to the Mediterranean area. Their practice throughout the time they have operated in that trade has been to quote and charge rates roughly 10 percent under the rates maintained by the conference.

As far as the other conferences that I represent are concerned with respect to the South American trades, we have numerous outside competition today. We have had it in the past and we have it right now.

Back in the European Conference, in the past year we have had five different outside operators in the trade, Mr. Chairman. We have two that might be regarded as regular lines, regular operators in the trade right now, pretty much following the Isbrandtsen practice of quoting rates differentially under our own tariff rates. I might name those for the record.

We have the vessels of DeVries, the vessels of Stinnes. We have the vessels of Wollenius, the Finnish company. We have those of Solen, Swedish fruit ships. We have others whose actual owners I cannot at the moment, recall, but one of the vessels was the *Fana* which solicited fresh fruit in the Northwest and the *Wihinapa*. We have the Utah Construction Co. operating regularly now from the Pacific coast to the West coast of South America.

So that the statement made by Isbrandtsen that there is no such thing as nonconference competition on the West coast is simply not true. There is, and there is a great deal of it.

Mr. O'Connor took occasion to mention the subject of the Pacific Coast-European Conference having assessed a large penalty against one of its contract shippers, the Anderson-Clayton Co. The situation, I think, should be clarified for this record. It is not a matter in which Isbrandtsen was involved in any way. Anderson-Clayton, a contract shipper of the Pacific Coast-European Conference, and a very large shipper of cotton to Europe as well as the other areas in the world, made a shipment on board a nonconference vessel. In accordance with the terms of the contract with Anderson-Clayton Co., we assessed against them the customary liquidated damages in strict accordance with the terms of the agreement.

I would like to divert just a moment at this point to say this: That so far as the contract rate system is concerned or any other arrangement for tying shippers to the members of a conference it provides for exclusive patronage or in the alternative some arrangement for liquidated damages. It necessarily follows that there will be violations of those commitments between shippers and conference carriers. It is certainly not the first one we have had in the Pacific coast in the conferences we represent. We have had a great number of them.

As I see it, this is no different than any of the others. The amount of liquidated damages was stated by Mr. O'Connor to be \$140,000. In fact, I think it is \$145,000. Our contract with the shippers provides in the event they make a shipment on a nonconference vessel they shall pay to the conference as liquidated damages the amount of freight that would have been paid at the contract rates had they shipped on a conference vessel. That particular amount was considered by the Federal Maritime Board or its predecessor, the United States Maritime Commission in 1948 in the case of docket 648.

The Commission at that time recommended that we charge three times the amount that we are now charging as liquidated damages. What is the correct amount, I do not know. It is a subject that has been considered by conferences and the regulatory body and by carriers and shippers in negotiations for a period of, I suppose, three-quarters of a century. What is right and what is wrong, I do not know, but I do know this: that as far as the European Conference is concerned, our principal objective must necessarily be nondiscrimination among shippers.

It so happens that Anderson-Clayton's shipment was a large shipment and the amount of liquidated damages was a large amount, but we cannot find ourselves in a position of assessing liquidated damages against small shippers and not against large shippers.

I believe this: That Anderson-Clayton is well aware of the fact that the practice of this conference in the past has been to compromise and settle these claims at substantially less than the actual amount assessed; in fact, at about 10 percent of the amount.

I am quite sure they know that that can be done at this time. I am quite sure that they realize that the purpose of the conference is not to collect liquidated damages but simply to abide by their agreement, and we would much rather have them as a good customer rather than a shipper that is assessed liquidated damages and maybe disturbed over that fact. I think the important fact is that as far as Anderson-Clayton's presentation is concerned, they are now being charged noncontract rates and solely because in breach of their contract they made a shipment on an outside vessel.

Mr. O'Connor took occasion to refer to the fact that we had charged liquidated damages to the Borax Co., American Potash & Chemical, and the Stauffer Chemical Co. That is correct. Each of those made a shipment on an outside line, the Mitsui Line. Subsequently the Mitsui Line joined the conference. We did assess damages against the Borax Co. There was a dispute as to the interpretation of the contract at that time. We are resolving that dispute and I am perfectly confident in fact that the borax companies are content with the way that dispute is now being resolved.

Turning to a few other remarks made by the witnesses for the Isbrandtsen Co., one of the statements was that there are 63 conferences not using the contract rate system and therefore all conferences are perfectly able to get along without it and there will be no such thing as rate wars in our trades and he feels that the case that has been made by the conference witnesses to you gentlemen is greatly exaggerated.

Speaking for the people that I represent, that is not the fact. The conferences that I represent are trades in which the cargoes moving are of sufficient importance and lucrativeness to attract operators of all flags.

As respects these 63 conferences that he repeatedly mentioned, I am quite sure that some of those are conferences of passengers. The shipping act applies to the transportation of both freight and passengers and some of the conferences are passenger conferences and none of them have the contract rate system, obviously. Some of those conferences are conferences that involve trades in which it is very difficult to get any steamship line to go in, let alone worry about nonconference competition. One of those is one that I represent myself, Mr. Chairman. How many others are involved in that number, I do not know, but we have conferences in which we do not worry about nonconference competition and the reasons for that are many.

From the west coast of South America-North Pacific coast trade, for example, that is a trade in which there is no need for the contract rate system because the Pacific coast of the United States does not import very many commodities from the countries on the west coast of South America.

As a simple economic fact, the steamship lines are not interested in putting their ships in the trade where there is not much cargo moving and what does move is by and large bulk cargo. There is a great deal of ore that comes up from the west coast of South America, from Peru, and there is some frozen fish that comes up, but by and large it is not a substantial trade. There is no possible need to worry about outside competition. There just are not enough steamship lines in there to be concerned with that subject, and I would venture to suggest right now that if there are other conferences in which there is no non-contract-rate system the reasons for that are probably the fact that the trades themselves are trades in which there is little attraction to the steamship industry.

I think I might suggest this to Mr. Crinkley: That if there are so many conferences and so many trades that are able to get along without the contract-rate system and he has such a violent objection to the contract-rate system, why does he not put his own vessels in those trades and take them out of the trades where there is the contract-rate system?

I believe the answer to that is simply that the trades that Isbrandtsen would like to operate in are those trades where there is a good possibility of carrying cargo and making a profit and those are the trades in which it is necessary for the members who join a conference to have some way of preventing rate cutting by the outsiders.

Now, one of the things that the Isbrandtsen Co. has stated to you and which they have stated many times in the past and it seems to me it is high time that we take that issue on directly and explode it, is this: That is that the Isbrandtsen Co. is highly in favor of open com-

petition. They make a great point of publicly stating that they are one of the few lines that is in favor of competition and that competition is the American way of life and that the rest of us are cartels and price-fixing arrangements; that they are independent, all of the other lines are not independent, they are price fixing.

I suggest this to your committee, Mr. Chairman; that the Isbrandtsen Co. is perhaps one of the very few if not the only one under the American flag that cannot stand competition. The Isbrandtsen Co. operates in trades where there is a conference and they do not object to the conference. They make a point of always saying that they do not object to there being a conference. They only object to the contract-rate system.

I think they like the conference as a method of holding a fixed rate under which they can operate and quote rates at a differential under the conference members themselves.

Mr. Crinkley said this morning that he cannot see any reason why anybody should object to their practice of cutting rates in view of the fact that by cutting rates they have been able to make a very nice profit for Isbrandtsen Co.

I might ask this question: If that is the fact that they can make a nice profit by cutting their competitors' rates, why should their competitors not object? Why should not each competitor be on the same basis or at least able to compete with every member in the trade?

Isbrandtsen is the only line that operates in our trade that seems to feel that they are entitled to have all of their competitors bound by a uniform rate structure and Isbrandtsen perfectly free to charge any rates they want to; in other words, not subject to any competition at all, free to charge 10 percent under their competitors' rates but their own competitors not allowed to meet Isbrandtsen's competition.

One of the things that I think should strike you as curious about their testimony is the fact that in the Japan inbound trades, that is, from Japan to the Pacific coast of the United States and the Atlantic and Gulf coasts of the United States for quite some time Isbrandtsen enjoyed their usual 10-percent differential under the conference rates. Then the conferences went on and opened their rates and opening rates simply means that the members of the conference decide that they will permit themselves, individually, to meet the outside competition such as that of the Isbrandtsen Co., and they wipe out their agreed rate structure.

When that was done, and each member of the conference promptly competed openly with the Isbrandtsen Co. in quoting rates to the shippers in that trade, I think the very first line that suggested that they stop competing with each other was the Isbrandtsen Co., and in fact they published notices in the newspapers in Tokyo, copies of which I have kept, in which they publicly stated out there that it was ridiculous for all of the lines in the trade to be competing with each other and reducing their rates.

They offered to make an arrangement with all the other lines in the trade; namely, those in the conference, to stop rate cutting, cutting each other's rates, and to go back and fix their rates at 75 percent of the level that the conference had maintained before they opened their rates to meet the Isbrandtsen competition, and they said if that were done the Isbrandtsen Co. would maintain the same level of rates.

That is nothing more than what the conference does, but when the conference does it they must obtain the approval of the Government because that is rate fixing. In other words, all Isbrandtsen wanted was the right to cut their competitors' rates, but as soon as their competitors opened their rates so that they could meet Isbrandtsen and perhaps cut their rates, the Isbrandtsen Co. hollered and said, "Let's stop this altogether and fix our rates and we will agree to abide by them if it is done that way."

The CHAIRMAN. To whom did they make that offer?

Mr. JAMES. How did they make the offer?

The CHAIRMAN. How did they make the offer?

Mr. JAMES. In the newspapers in Tokyo.

The CHAIRMAN. Do you mean to say they suggested that the other lines get together? Are there any letters or anything of that kind?

Mr. JAMES. Mr. Chairman, I think there were. There was an exchange of correspondence on that subject whereby they made that suggestion.

The CHAIRMAN. They were letters to whom?

Mr. JAMES. To the chairman of that conference.

The CHAIRMAN. To the chairman of the conference. Can you get a copy of the letters?

Mr. JAMES. I will certainly endeavor to do so.

The CHAIRMAN. Do you have copies of them?

Mr. JAMES. Yes, I do.

The CHAIRMAN. You have a copy?

Mr. JAMES. Yes, I do.

The CHAIRMAN. Will you read it into the record at this point?

Mr. JAMES. I do not have it with me.

The CHAIRMAN. I wish you would send it for the record.

Mr. JAMES. I will be happy to do that.

(The document referred to follows:)

LAW OFFICES, JOHN J. O'CONNOR,
Washington, D. C., October 21, 1954.

Mr. R. S. WINTEMUTE,
Uchisaiwai-cho, Chiyado-Ku, Tokyo, Japan

DEAR MR. WINTEMUTE: Thanks for your letter of October 6, 1954. It was most interesting.

One part of it particularly prompts me to reply at this time. You state that the remanding of Examiner Furness' decision in docket 730 (which has happened) "only puts the matter off still further and in the meantime of course our conferences will have to continue to meet Isbrandtsen's competition with open rates. As for myself, I feel they are likely to continue this policy until such time they are afforded relief with the contract/noncontract rate system or some other protective system. It is really too bad that such a situation should exist and that no one has come out with an idea which might bring about some sort of legal arrangement between the conference and Isbrandtsen and allow stabilization of freight rates on a reasonable basis and sensible competition along with it."

Without prejudice to, or weakening in, our definite position as to joining conferences or our attitude toward dual-rate systems, I do have some "ideas"—on my own—and hereby "come out" with them to you, to chew over alone or over the table with your people.

As I recall, back in the summer of 1953, Isbrandtsen made and publicized some overtures to two Japan-United States conferences in connection with the rate war, to get together on rates with Isbrandtsen, but some conference people, we were informed—and you can look at your minutes—objected particularly to certain conditions which Isbrandtsen attached to its proposition.

Suppose, now, that Isbrandtsen was willing to enter into a "legal arrangement" with the two conferences and their lines, to maintain uniform rates—subject, of course, to filing with and approval by the Maritime Board—

That until a complete schedule of rates had been worked out and had become effective after 60 days' notice, the parties agreed to maintain—after, say, 30 days from the date of the agreement—minimum rates of \$18 to the Atlantic and gulf and \$14 to the Pacific;

That the agreement would be conditioned on Isbrandtsen reserving certain rights on the happening of certain events, such as—

If Isbrandtsen found that any conference line or lines were not maintaining the agreed uniform rates, by reason of lower quotations, discounts, rebates, misclassifications, misdeclarations of weights or measurements, paying unfounded claims, or by any other means, Isbrandtsen would report such instances to the conferences and within 30 days the conferences would advise Isbrandtsen that they had made investigations and disclosed facts to disprove such charges, or state that action had been taken to stop them, otherwise Isbrandtsen would be free to meet any such situation by appropriate rate adjustments on its part;

The lines, including Isbrandtsen, might provide for the posting of substantial bonds—say \$25,000, or even more—providing for forfeits for any malpractices of amounts, say, equal to the total freights that would have been applied if there had been no such malpractices—such sums forfeited to be paid to such persons or into such funds as would be agreed to;

That should Isbrandtsen receive any requests from exporters, importers, or their agents, for rate adjustments claimed to be necessary to promote or maintain trade, Isbrandtsen would transmit such requests to the conferences involved, along with Isbrandtsen's recommendations and the reasons therefor. Within 21 days after receiving such requests and data from Isbrandtsen, the conferences would advise Isbrandtsen as to their decisions on such requests for rate adjustments, and if contrary to Isbrandtsen's recommendations, the reasons for such contrary decisions. Isbrandtsen would reserve its freedom to make such adjustments as seemed reasonable and in keeping with the purpose of aiding and promoting American foreign trade, but only after the matter had been submitted to, and opportunity afforded the conferences to act within the time limits mentioned. Isbrandtsen feels very strongly about maintaining its policy to make rate adjustments where there is a bona fide showing that it is necessary to maintain and promote trade.

The conferences and Isbrandtsen would agree that, regardless of the reasons therefor, either party would notify the others of any rate changes, up or down, say at least 24 hours before exporters, importers, or their agents, were notified, and at least 60 days before the effective date of any increases and 15 days before the effective date of any decreases.

That the agreement remain in effect as long as the conferences do not establish the dual-rate system or any "other protective system" similar, which would in any way interfere with or prevent full and free access by Isbrandtsen to the business of any and all exporters and importers in these trades.

What do you think?

Let's hear.

Sincerely,

JOHN J. O'CONNOR.

P. S.—This letter is not exactly "personal"—just to you—and I could not ordinarily treat your letters to me as "personal," as you marked your letter—in the sense of being absolutely confidential—to the exclusion of my showing our correspondence to Messrs. J. Isbrandtsen and Crinkley; otherwise I have no idea of broadcasting.

J. J. O'C.

Mr. JAMES. Along the same line, might I add that while the witnesses for the Isbrandtsen Co. repeatedly state the conferences are nothing but international price fixing cartels, they come out publicly in the newspapers, and did so here this morning, and state—

The CHAIRMAN. Do you have a copy of those newspaper ads?

Mr. JAMES. Yes, I do.

The CHAIRMAN. Send them in for the record, please.

(The documents referred to follow:)

ISBRANDTSEN LINE

NEW YORK

INDEPENDENT

DEPENDABLE

REGULAR SAILINGS FROM JAPAN

No. 22

Tokyo, November 6, 1952.

 * WE ARE HAPPY TO ANNOUNCE TO ALL OUR SHIPPERS THAT OUR *
 * NEW RATE EFFECTIVE S/S "FLYING CLOUD" WILL BE 10% LESS *
 * THAN THE CONFERENCE CONTRACT RATE *

TO NEW YORK, NORFOLK, BALTIMORE & PHILADELPHIA VIA
 SAN FRANCISCO & LOS ANGELES

<u>Vessels</u>	<u>Kobe</u>	<u>Nagoya</u>	<u>Shimizu</u>	<u>Yokohama</u>
S/S FLYING CLOUD	Arrived S'ls. Nov. 10	Nov. 11 Nov. 12	Nov. 13	Arr. Nov. 14 S'ls. Nov. 16
S/S FLYING TRADER	Arr. Nov. 21 S'ls. Nov. 25	Nov. 26 Nov. 27	Nov. 28	Arr. Nov. 29 S'ls. Nov. 30
S/S FLYING ENTERPRISE II	Arr. Dec. 3 S'ls. Dec. 7	Dec. 3 Dec. 9	Dec. 10	Arr. Dec. 11 S'ls. Dec. 15
S/S FLYING CLIPPER	Arr. Dec. 24 S'ls. Dec. 26	Dec. 27 Dec. 29	Dec. 29	Arr. Dec. 30 S'ls. Dec. 31
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Nippon Times, March 14, 1953, Tokyo

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S/S FLYING FOAM

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Arrives	Mar. 13	Mar. 14	Mar. 16	Mar. 20	Mar. 21
Sails	Mar. 12	Mar. 17	Mar. 19	Mar. 21	Mar. 23

S/S FLYING CLOUD

	Mar. 24	Mar. 26	Mar. 28	Mar. 30	Mar. 31
Arrives	Mar. 24	Mar. 27	Mar. 29	Mar. 31	Mar. 31
Sails	Mar. 24	Mar. 27	Mar. 29	Mar. 31	Mar. 31

S/S FLYING TRADER

	Apr. 14	Apr. 16	Apr. 18	Apr. 21	Apr. 21
Arrives	Apr. 14	Apr. 16	Apr. 18	Apr. 21	Apr. 21
Sails	Apr. 17	Apr. 19	Apr. 20	Apr. 23	Apr. 23

ISBRANDTSEN FREIGHT RATES

IT IS VERY IMPORTANT THAT THE FOLLOWING MESSAGE BE UNDERSTOOD BY ALL SHIPPERS. THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY.

1. ISBRANDTSEN WILL NOT BE UNDERQUOTED.
2. ISBRANDTSEN WILL GIVE ITS CUSTOMERS THE PROTECTION OF THE BEST RATE GOING. THIS MEANS THAT OUR CUSTOMERS CAN HAVE EVERY CONFIDENCE IN CONTINUING TO LOAD THEIR CARGOES TO ISBRANDTSEN VESSEL AND KNOW WITHOUT ANY DOUBT THAT THEY WILL RECEIVE THE LOWEST GOING FREIGHT RATES IN THE MARKET AS OF THE TIME OF THE LOADING OF THEIR CARGOES.
3. ISBRANDTSEN WILL DO WHAT IS NECESSARY TO REMAIN COMPETITIVE AND TO PROPERLY PROTECT OUR CUSTOMERS FROM BEING INJURED BY RECKLESS COMPETITION ON THE PART OF DISAFFECTED CONFERENCE MEMBER LINES.
4. ISBRANDTSEN WELCOMES FIRM OFFERS OF FREIGHT AND RECOMMENDS THAT SHIPPERS TALK WITH US BEFORE CLOSING ANY FREIGHT BUSINESS TO THE UNITED STATES AND PARTICULARLY TO THE EAST COAST AMERICAN PORTS.
5. THE ABOVE APPLIES TO ALL ITEMS OF CARGO FOR WHICH FREIGHT RATES HAVE BEEN THROWN OPEN BY THE JAPAN-ATLANTIC AND GULF FREIGHT CONFERENCE.
6. PLEASE UNDERSTAND THAT WE WILL NOT, UNDER ANY CIRCUMSTANCES, ENGAGE IN ILLEGAL PRACTICES SUCH AS GIVING OR PROMISING SECRET REBATES. BUT YOU CAN BE ASSURED YOUR NET FREIGHT COST WILL BE LOWEST VIA ISBRANDTSEN.

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Osaka:	2nd 2002, Tokaiwa Bldg., No. 1, 3-chome, Koraihashi, Higashi-ku. 13-7503
Shimizu:	Shimizu Soka 2, 1-chome, Minato-ku. Shimizu 1144, 1851.
Nagoya:	Aichi Kaikan, 4 4-chome, Minato-ku, Minato-ku. Tsurumi (6) 1851-5.



ISBRANDTSEN

ROUND-THE-WORLD
SERVICE

Tokyo, December 3, 1953

ISBRANDTSEN RATE POLICY

We have checked with Isbrandtsen Company, New York, regarding the rumour that Isbrandtsen had asked the Conferences through the Pacific Far East Lines to halt the rate war on the basis of an arrangement whereby all lines would assess equal rates. Isbrandtsen Company has asked us to state that this rumour is untrue and senseless since Isbrandtsen has not been participating in the cut-throat, below-cost, dumping rate war. Isbrandtsen policy was stated clearly in its public announcements of June 16th and July 6th, 1953. This policy is still our precise position.

Briefly summarized, Isbrandtsen policy is as follows: We are fully prepared to take constructive action towards the stability of freight rates desired by all interested in a healthy and progressive trade between Japan and the United States. We have no interest in or intention to transport cargo at unprofitable rates. If freight rates are established which are fair and reasonable to the Japanese Exporters, the American Importers, and to the carriers, we are prepared to apply such rates on cargo shipped on our vessels with the following necessary reservation. It is a basic policy of Isbrandtsen to give prompt and considerate attention to the adjustment of freight rates required to establish or maintain the flow of commerce between the countries served by our vessels.

We expect to maintain our competitive position vigorously and entirely above board. We trust the present dumping rates being assessed by our competitors will be replaced by fair and reasonable rates in the immediate future.

On July 15th, Isbrandtsen took the first constructive step toward stabilization by increasing its rates to the Conference Rates in effect prior to the outbreak of the freight war less fifty percent and with minimum rates of \$9.00 per payable ton to US Pacific Coast Ports and \$12.00 per payable ton to US Atlantic Coast ports. Isbrandtsen also proposed that all other lines follow its lead in taking a second step which would establish a more realistic permanent level to prevail thereafter. We invite the support of all who desire the establishment of fair and stable rates.

We hope the Conference Lines will by now have seen the futility of assessing below-cost rates and the danger to Japan's future trade position in continuing to carry cargo to the United States at dumping rates. On the basis of the conditions specified above, and when rates are stabilized at a fair level, Isbrandtsen will apply the same net rates as the Conference Lines.

HOTHERSHIP

THE MAINICHI, MONDAY, MARCH 15, 1954

**ISBRANDTSEN**ROUND THE WORLD
SERVICE**To NEW YORK****NORFOLK, BALTIMORE and PHILA-
DELPHIA via SAN FRANCISCO, LOS
ANGELES and NEW HAVEN****ISBRANDTSEN RATE POLICY ON THE FIRST AN-
NIVERSARY OF THE RATE WAR**

One year ago the Conference began the current rate war. Isbrandtsen withdrew from this cut-throat rate war in May 1953. Isbrandtsen has not reentered because it does not believe in quoting below-cost dumping rates. Isbrandtsen is willing to cooperate in any honest effort toward stabilization of rates. If rates are established by the Conference or the Japanese Lines which are fair and reasonable to all concerned, Isbrandtsen will apply such rates. (At the same time, Isbrandtsen will continue to give prompt and considerate attention to adjustment of rates when such adjustments are necessary to establish or maintain the flow of commerce.) Isbrandtsen will continue its regular, independent service.

s/s FLYING EAGLE

	Kebe	Nagoya	Shanghai	Yokohama
Arrives	Mar. 21	Mar. 23	Mar. 24	Mar. 25
Departs	Mar. 23	Mar. 23	Mar. 24	Mar. 26

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Los Angeles	Mar. 26
San Francisco ...	Mar. 26
Yokohama	Apr. 11
Kebe	Apr. 14
Takao	Apr. 18
Keelung	Apr. 19

S/S GRENADA

Departs	
Baltimore	Mar. 22
New York	Mar. 26
Houston	Apr. 3
San Francisco ..	Apr. 21
Arrives	
Yokohama	May 6
Kebe	May 8

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Tel. Tsukiji 6-1801/3, 1808

SHIPPING GAZETTE

March 22, 1954

ISBRANDTSEN COMPANY, INC. NEW YORK

Messrs. Nippon Trading & Steamship Company, Ltd.
No. 1, Ekome, Hongoku-cho
Mitsunashi, Chuo-ku,
Tokyo, Central P. O. Box 353,
Tokyo, Japan.

March 22, 1954

ISBRANDTSEN PROPOSES RATE INCREASES; GOVERNMENT ACTION TO STOP THE RATE WAR

Gentlemen:

Re your letter of March 1, 1954, we think that you expressed our position very well to the gentleman of the Government with whom you met on February 27th. As to those factors where you expressed our position clearly, we will not comment here, however, two or three items appear to need further comment from us.

We refer to the suggestion that we negotiate direct with the conferences regarding steps to end the rate war. For reasons of basic policy we will not join a cartel, another name for conference. Our position in that respect is the same as the overwhelming majority of American business men in every industry. We believe in and practice the American concept of competitive free enterprise.

To negotiate directly with the conferences means the making of agreements which must be filed with and approved by our regulatory authorities here, and which would be considered by American exporters and importers as the equivalent of joining and becoming members of the conferences. What we did was to make even more binding public commitments when we advertised our willingness to apply the same rates as conference lines under certain stated conditions. We say this to emphasize our sincere purpose to assist in ending the rate war, and to repeat we do not want to set a trap, or escape hatch as to our proposal except as to dealing fairly with the shipping public, and as to the actions of the conference members themselves.

What did we mean by our condition as to "fair and reasonable rates"? First as to Japanese ship rates they have insisted rates prior to March 12, 1954, were too high. We think they were right and their interests must be protected by the carriers as being very definitely the "joint interests" of carriers and shippers. Further if rates are too high and there is not enough cargo to go around, this with so many lines in the trade, some of the lines could well afford to give secret discounts and we fear would do so. We oppose all such practices (unfair practices) and consider rates that are too high are a factor which has very definite effect on our particular matter.

Rates which are "fair and reasonable" to American importers carries the same general connotation as our remarks as to Japanese exporters,

with the one additional thought that cargo is usually paid for when loaded and the bills of lading are issued and thus when cargo moves from Japan to U.S.A. it is usually American property which is being transported and moreover the American importer usually pays the actual freight charges. It seems to us the interests of the American importers must be considered.

Rates which are "fair and reasonable" to the carriers means rates which are not too high and which prejudices the flow of business from Japan to U.S.A., and which are not too low to allow the carriers a reasonable profit to which they are entitled. Some shippers have suggested rates which are too low, while some carriers appear to insist on rates which are too high. We want to see rates which are fair to all concerned.

It is our present thought that freight rates should be set at somewhere around 75% of the conference rates in effect immediately prior to March 12, 1954.

If the conference lines should succeed in establishing the exclusive patronage conference contract dual rate system, we would be forced to withdraw our proposal to join the conference as the conference. We will not join the conference. The purpose of the conference contract rate system is to attain a monopoly in the conference members; and this is true regardless of any groundless and false contention its purpose is to stabilize rates and earnings for the benefit of shippers. Conditions are usually very stable where complete monopolies exist. Further, there is doubt that there will be any reasonably stable conditions so long as the number of ships being operated so far exceeds the number required to transport the cargo available.

Otherwise as previously stated in this letter we consider all other factors discussed at the meeting referred to were properly explained by you as reported in your letter of March 1, 1954. We suggest you pass on to the Ministry of Transportation the explanations set forth in this letter.

Yours very truly,

ISBRANDTSEN COMPANY, INC.

ISBRANDTSEN

NEW YORK

INDEPENDENT

DEPENDABLE

REGULAR SAILINGS FROM JAPAN

No. 93

Yokohama, April 6, 1954.

TO: ALL EXPORTERS AND SHIPPERS:

SPECIAL ANNOUNCEMENT ON ISBRANDTSEN MINIMUM RATES

We have received the following cabled instructions from our principals, Isbrandtsen Company, New York:

1. "ON THE BASIS OF YOUR ADVICES THAT THE JAPANESE LINES ARE TAKING ACTION TO INCREASE THEIR MINIMUM FREIGHT RATES, PLEASE ANNOUNCE TO TRADE THAT EFFECTIVE JUNE 6 OUR ISBRANDTSEN MINIMUM RATES WILL BE INCREASED TO \$12.00 WEST COAST USA AND \$15.00 EAST COAST.
2. "IN ORDER ATTEMPT COMPLY WITH WISHES OF EXPORTERS TO EFFECT INCREASES BY STEPS, IT WILL BE FURTHER IN ORDER TO ADVISE SHIPPERS THAT WE ARE PREPARED TO ACCEPT BOOKINGS FROM AUGUST 6 THRU OCTOBER 6 ON THE BASIS OF MINIMUMS OF \$15.00 WEST COAST AND \$20.00 EAST COAST CONFIRM WITH YOUR COMMENTS"
3. "PLEASE UNDERSTAND THAT IF THE JAPANESE LINES DO NOT FOLLOW OUR ACTION WE WILL PROTECT NET RATES THEY ESTABLISH PROVIDED THEY ARE AT LEAST EQUAL TO PRESENT MINIMUMS".

<u>Vessel</u>	<u>Kobe</u>	<u>Nagoya</u>	<u>Shimizu</u>	<u>Yokohama</u>
S/S REMSEN HEIGHTS	Arr. Apr. 21 S'ls. Apr. 24	Apr. 25 Apr. 25	Apr. 26 Apr. 26	Apr. 27 Apr. 28
S/S FLYING ARROW	Arr. Apr. 26 S'ls. Apr. 28	Apr. 29 Apr. 29	Apr. 30 Apr. 30	Apr. 30 May 3
S/S SIR JOHN FRANKLIN	Arr. May 12 S'ls. May 14	May 15 May 15	May 16 May 16	May 17 May 18

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SHIMIZU:

(Shimizu Soko) 2, 1-chome, Hinode-cho. Tel. Shimizu 1144, 1901, 1608

MR. JAMES. While they decry the international cartels that we represent as rate-fixing bodies that deny the right of free competition to the carriers in our international trade, nevertheless they wind up by saying, "If these cartels would be absolutely one hundred percent effective, we would join them," and it is difficult for me to see their criticism of a cartel when they would be happy to join it by their own statement if it were just a more effective cartel.

He said to you this morning that he would join these conferences on four conditions, one of which was that the conferences were able absolutely to maintain agreed rates; in other words, that the members of the conference would not violate their own agreed rates, which was his charge.

The fact is that in the conferences that I represent, Mr. Chairman, when the members of the conference do—and there are such occasions, I suppose—rebate below their own agreed rates, they do so because there is an outsider in the trade who is cutting their rates and it is a perfectly natural thing to have happen. It is something we try to stop completely but, when you have 24 lines in one trade all of whom are charging, we will say, \$1 a hundred on a particular commodity and there is one outfit in the trade that is charging 10 percent under that, the particular lines that go to those same ports have a great compulsion as far as the importers and the shippers in the trade are concerned to compete with that 10 percent reduction and if they cannot do it openly, they find means of doing it by rebating 10 percent themselves.

So what Mr. Crinkley is simply saying is that there is rebating going on among conferences, and perhaps there is some rebating going on among conferences but if that is the fact, the objective of the lines who do that is to meet the competition of the line that is outside, such as the Isbrandtsen Co., which is cutting their rates, not to meet the competition of the other members of the conference who are charging the same rates.

Another thing that Mr. Crinkley objected to this morning was the fact that the members of the conference grant under their shippers' rate agreements, that is, their exclusive patronage contracts, only 60 to 90 days' notice of increases in their rates and, generally speaking, that is correct. Most of our agreements provide for either a 60- or 90-day period of advance notice to the shipper before we change our rates and, if I might explain that, I would like to point out that in international trade where there is dual jurisdiction of rates, carriers are not required by the law of either country, either maritime nation, either importing or exporting nation, to give any advance notice at all. There is no requirement. Whatever is done is purely voluntary. The 60 to 90 days' advance notice that we give is purely voluntary under our contract. It is one of the considerations that we give to the shipper in consideration for his exclusive patronage.

The Isbrandtsen Co. conducted a proceeding called *Afghan Trading Co. v. Isbrandtsen* before the Federal Maritime Board to prove and establish the fact that as far as Isbrandtsen is concerned they could increase their rate the very morning upon which they received the shipment from the shipper. That is the fact.

In another case, the Isbrandtsen Co. took to the Supreme Court an objection against the Federal Maritime Board's decision in their

docket 128, requiring all carriers in the export foreign trade commerce to file their rates 30 days after they are effective. Isbrandtsen objected to doing that and went to the Supreme Court to support their objection. The fact is that the Isbrandtsen Co. does not give any notice at all of their increases in rates. In fact, they maintain their right to increase their rates the very day they receive the shipment and have done so. Yet they object to our giving 60 to 90 days' notice.

They think, I suppose, that we should give more than 60 to 90 days' notice.

The CHAIRMAN. Do you have the records to substantiate these charges that they increase their rates the day they receive the cargo? Do you have records to show that?

Mr. JAMES. Yes, that was the case of *Afghan Trading Co. v. Isbrandtsen*, a formal proceeding before the Federal Maritime Board.

The CHAIRMAN. Who is this Afghan Trading Co.?

Mr. JAMES. Afghan Trading Co. was a shipper, Mr. Chairman. Just who they were, I do not know.

They objected to Isbrandtsen's having increased the rate on their commodity the very day they delivered the shipment to them.

The CHAIRMAN. That matter went before the Maritime Board?

Mr. JAMES. Yes, it did, Mr. Chairman. It is a matter of public record.

The CHAIRMAN. Do you have the docket number?

Mr. JAMES. The Board upheld the right of a steamship line in foreign trade that was not a member of the conference to make its rates without notice.

The CHAIRMAN. The Board said it was all right?

Mr. JAMES. They did.

In answer to your question, Mr. Mailliard, on how rates are constructed, how does Isbrandtsen make their rates, Mr. Crinkley said that Isbrandtsen Co. makes their rates on two bases, as I understood him at least. One, he said there there is a conference with a dual-rate system they have a policy of charging 10 percent less than the conference. Where that is not the fact, he said they go to the shippers and they negotiate a particular rate with a particular shipper.

I do not question either one of those statements.

From my observation of the Isbrandtsen Co.'s operations, that is exactly what they do do.

In our case in the making of rates, which Mr. Crinkley called discriminatory because we charge two different levels or rates; namely, contract and noncontract rates, all of our contract rates are exactly the same, so that every member of the conference charges the same contract rate.

By his own admission, the Isbrandtsen Co.'s method of ratemaking is to make a rate for each shipper and that is exactly what they do. We do not. We give rates to all shippers, large and small, which are exactly the same rates.

As far as discrimination between contract and noncontract rates is concerned, there is no such thing.

I do not believe there is any such thing as a noncontract shipper, Mr. Chairman, and if I can take 1 minute to explain that, I would like to do so, because there seems to be some idea in this testimony that there are contract shippers and noncontract shippers and that the

conferences discriminate against the noncontract shippers. I think the fact is that any one exporting goods or importing goods in foreign commerce is certainly going to get the lowest rate he can possibly get. The best way to do that is to sign a contract with a conference.

I cannot imagine any shipper making a shipment on a conference vessel without calling for a contract and signing it. All they have to do is to write to the conference and we send them a contract and they sign it. We have somewhere over 3,500 contract shippers in the European conference and about the same, I guess, in the South American conferences, and somewhere close to that in the straits and Indonesian trades. Every one who goes into foreign commerce certainly the first thing he does is to sign a contract, so that there is no such thing as a noncontract shipper.

As far as noncontract rates are concerned, they are not the rates. The rates that the shippers are concerned with and the rates that we are concerned with are the contract rates. When we talk about rates, those are the rates we are talking about, so that there is no such thing as charging this shipper the contract rate or that one the noncontract rate except in the particular case of a shipper who has violated the contract whereupon the noncontract rates are assessed against him. That, I submit, is not discriminatory because the basis of it is the violation of the agreement.

The CHAIRMAN. Did I understand you now to mean that whether one is in the conference or not in the conference the goods that are shipped over either line are by contract?

Mr. JAMES. Well, yes. The point I am making is this, Mr. Chairman, I just want to clarify this point because it seems to me that there has come out here the understanding that there are two kinds of shippers in our foreign trade, namely, the contract shippers and noncontract shippers, noncontract shippers who use the nonconference vessels and contract shippers who use the conference vessels or possibly that they balance the two to their own convenience. In practice that just does not happen. In fact, the idea is something it is hard for me to digest.

As soon as any shipper, as soon as any producer, whether an agricultural producer or manufacturer or exporter or otherwise, obtains his very first order from a foreign country and discovers that he must make a shipment in foreign trade and get up his goods from San Francisco or Los Angeles to Antwerp and he looks into the method of getting there, he discovers that there is a contract-rate system, whereupon, in order to get the lower of the two rates, he writes in to the conference and we send him a contract. He signs it and gets the contract rate.

Frankly, I have never heard of a noncontract shipper. I have been intimately associated with these conferences now for more than 10 years and in that time I have yet to meet the noncontract shipper. All of our shippers are contract shippers. It is just not possible for anyone to go into the exporting or importing business without knowing that there is a contract-rate system in effect in that particular trade and signing a contract.

The CHAIRMAN. Does the independent, about whom we are talking, ship by contract? Are the goods which a shipper ships over the independent ship by contract?

Mr. JAMES. With the independent, it is generally in violation of the contract with the conference. In our trade at least, Mr. Chairman, and I will stand by this statement, all of the shippers on the Pacific coast are contract shippers so that if any one shipper uses an outside line, he is a contract shipper and in using the outside line he is necessarily doing so in violation of his contract with the conference so that our problem is that when someone comes into the trade on a nonconference basis and cutting rates, the real difficulty that puts pressure on everyone who can use the services of that particular carrier to violate their contract with us, and to ship on the outside line and the pressure generally comes from the importers abroad. Most outside lines in my experience, instead of soliciting the shippers in the United States, have their agencies solicit the importers abroad and have the importers abroad advise the exporter on this side that they wish to have this exporter use the outside line in order to obtain the benefit of the outside line's lower rates. That immediately puts pressure on every other competitor of that shipper and they all put it on us. They come to us and want us to meet the competition of that outside line, but obviously you cannot meet anybody who quotes 10 percent under your rate.

Congressman Mailliard, you asked this morning a question of Mr. Crinkley with regard to the situation of rates to Puerto Rico, I believe, or perhaps it was Congressman Allen.

My recollection of that situation was that the Isbrandtsen Co. withdrew their announced increase in rates when States Marine came into the Puerto Rican trade and adopted the rates which had existed before Isbrandtsen had filed their increase.

Mr. Crinkley stated that the other lines in the trade in order to be competitive with the States Marine's new service agreed that they would withdraw their increases and maintain the existing rates; namely, the rates that States Marine had adopted.

My recollection of the facts of the situation are somewhat different. I recall that particular announcement of increases and in that trade, by way of interjection, rates are controlled by the Federal Maritime Board.

In our domestic offshore trades, the Board fixes the level of rates. In that particular instance, when the Isbrandtsen Co. withdrew their notice of increased rates, they stated they were withdrawing the notice in order to maintain parity between their rates and those of the other operators in the trade.

I have alluded to that for only one reason, that if in the Puerto Rican trade, from the Pacific coast to Puerto Rico, the Isbrandtsen Co. felt it necessary to maintain a parity of rates, to go as far as withdrawing an announced increase in order that their rates might be identical with those of the States Marine Corp., why is it that Isbrandtsen Co. can come before you gentlemen and oppose this bill stating that they believe in open competition?

They do not believe in open competition in the Puerto Rican trade.

Why is it that they feel and can state to you gentlemen that they believe that we are entitled to a little bit of competition in foreign trades?

They say they do not want a lot. They just want a little bit. The little bit is that all of their competitors shall be bound by a uniform scale of rates but Isbrandtsen shall be permitted to charge less. They

want that privilege in foreign trade but they could not stand under that very same condition in the Puerto Rican trade. In other words, what the Isbrandtsen Co. has wanted for many years, a quarter of a century now, has been that Isbrandtsen shall have all of their competitors noncompetitive with Isbrandtsen. Isbrandtsen shall have the unique privilege of charging 10 percent less than anybody else. It is for that particular reason that they have been doing that for 25 years now and getting away with it, that we are very happy and delighted to see that you have announced that you will go into this entire subject and not leave it with this interim bill.

I think that, having gone through litigation for 25 years on the subject, it would help us all if the Congress would announce whether or not the United States policy is to maintain stable rates in our foreign trade as well as in our domestic trades and if so, how that shall be done, and what are the requirements, and if there is a congressional policy to that effect and we are told how we may follow it and should follow it, of course, we can do it and we will do it.

Thank you.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman.

Mr. James, how long have you been personally engaged in the business in connection with these conferences?

Mr. JAMES. Well, for the past 11 years, Mr. Allen, almost daily, and prior to that time sporadically while I was in the Maritime Commission, a little bit during the war while I was in service.

Before the war, I practiced law in New York with the law firm of Barry, Wainwright, Thatcher & Symmers, and we did some conference work there, too.

Mr. ALLEN. The question was preliminary. Have you observed during your connection with the business whether or not there are shipping operators that have available some substantial number of vessels that move in and out of trades according to where the lucrative trade is either in tramp or in general cargo business?

Mr. JAMES. Yes, Congressman Allen, I can certainly answer that question. The Pacific coast-European trade is a particularly good example of that type of movement in and out of the trade.

In our trade from the west coast to Europe from the Northwest where we have a great deal of fresh fruit and from California, where we have a great deal of fresh fruit and canned goods and dried fruit, those commodities are seasonal commodities. They are picked at a particular season and dried at a particular season, and move on to their foreign markets during that season. Because of that fact and because, by and large, the rates on commodities of that kind are among the more lucrative rates, that trade from the Pacific coast to Europe has lent itself to what we call rate cutter or the sporadic operator who comes in for the particular trade and sends a vessel in, sends its solicitors around among the packing houses and canning houses and solicits cargo at rates differentially under the conference rates, fills out a ship, sends the ship over the Europe, and we never hear from him again until the next season. That happens every year. We have had it this year, last year, every year.

Mr. ALLEN. Are there a substantial number of such ships in the world trade, enough to constitute a threat to the very regular berth-line operators?

Mr. JAMES. Yes, the supply of those ships, Mr. Allen, is inexhaustible. There are ships available throughout the world in numbers to do that at any time.

Perhaps I could better explain it this way: that the members of the conference are the lines in the trade who operate vessels on regular scheduled routes and times just like the railroads operate, year in and year out. Some have been in that trade for 45 or 50 years. They build a vessel especially designed for that particular trade and many others.

Now we know that there are tramp vessels available all over the world in international trade. Because of the principle of freedom of the seas no country has ever attempted to prevent any vessels from coming into its ports or into its trade. If that were done, obviously it would lead to retaliation, so that the vessels that can take advantage of that situation are the vessels of the entire world of which there are, of course, literally thousands and, of course, their agents and brokers are looking for a good spot to put the ships at any time.

Mr. ALLEN. We have mentioned here several times that any line can get into a conference but on the other hand, are there requirements that are placed upon that line as to frequency of service or availability of service or anything that makes them qualify as a member of a conference?

Mr. JAMES. Well, that is a very good question. That is one of my own pet subjects.

The fact is that this conference business exists among maritime nations all over the world. It is not peculiar to our international trade.

With the exception of the trades to and from the United States, the conferences generally operate on a much stronger basis than we do. That is, their exclusive patronage arrangements are much tighter than ours have been permitted to be.

The conferences in the United States have been required by the Federal Maritime Board and its predecessors in a number of decisions going back to the middle thirties to admit any common carrier that seeks admission to the conference without permitting the conferences to put any restrictions on the admission whatever; so that what it boils down to is that under this system that has grown up in this country under that interpretation, if an operator comes into the trade with 1 ship, owning just 1 ship and he is willing to operate it on a regular basis in the trade, that is, to schedule it every year if he wants to, we would be obligated to take him into the conference, and every attempt of any conference to keep anyone out on any standard whatsoever at all that I know of, has been overturned by the Board.

Mr. ALLEN. If an operator wants to come in with 1 ship and wants to run in the west coast-European trade for 3 months and in the gulf-African trade for 3 months, and maybe 2 other routes for the other 2 periods of 3 months, can he come into the conference?

Mr. JAMES. If he owns one ship and wants to do this, I suppose we would have to take him in although I have not heard of that situation. Under their rules I know of no escape.

Mr. ALLEN. He would be bound to your rates. He could not come in with a one-trip proposition and undercut your rates if he were in the conference?

Mr. JAMES. If he sent his ship out to our coast, and this would go for any trade, if he sent the ship out there and did not apply for conference membership, obviously he would be free to charge any rates he wants to and not be bound by the conference. Of course, that happens all the time.

What he would do is solicit the shippers in the trade at rates differentially under ours. That would be what he would be more likely to do if he owned only one ship.

What is more common than that is the shipowner who does not own only one ship, of whom there are many throughout the world, who puts a few ships into our coast in our season and moves them down to the gulf for the banana trade and the east coast for some other trade and moves them around during the entire season.

Mr. ALLEN. Thank you.

Mr. JAMES. There is one other point which I think I should mention here. That is the statement made by Mr. Crinkley that the Pacific Coast-European Conference is dominated and controlled by foreign lines.

Presently the Pacific Coast-European Conference, as I remember, is 24 lines, one of which is States Marine, and the others are non-American lines. Well, the statement that conferences are controlled by foreign-flag lines is one of those things that Isbrandtsen talks about all the time for political purposes but it does not mean a thing in the world because the people who control the conferences are the lines that are in the trade.

It so happens that in this particular trade there are 24 steamship lines, one of which is an American line. They are all in the conference with the exception of Isbrandtsen. If there were 24 lines in the trade and they were all American, obviously, there would be more American lines, but anyone is perfectly free to put his ships wherever he wants to and they have not seen fit to put them in the European trade for obvious reasons.

The reason there are not American operators in the European trade is a matter of currency largely. There have been more American-flag operators in that trade from time to time and they have dropped out. Isthmian and Waterman were in there and they have all dropped out.

I think I ought to point out to the members of this committee that in international trade, which is all we are talking about here now, there is no such thing really as domination by American-flag lines or by foreign-flag lines.

Let us take the business of exporting from California to Stockholm. When the Johnson Line, which is a member of this conference, gets to Stockholm, they are not a foreign-flag line. This is international trade we are talking about.

When the Holland-America gets from San Francisco to Amsterdam, they are not a foreign-flag line.

When the Hamburg-American Line gets to Germany they are not a foreign-flag line, and every export and import in international trade is both an export from one country and an import into the other country, so that it is extremely misleading to say that this thing

is controlled by foreign-flag lines. That is completely ridiculous to make such a statement.

The conferences are controlled by the members of the conference, whoever they might be, and any line that wants to is welcome to join the conference.

The CHAIRMAN. Mr. Mailliard.

Mr. MAILLIARD. I have no questions.

Mr. COWEN. Mr. James, in relation to your question as to the rate war with Isbrandtsen and the Japanese trade, when they had cut the conference rate and had finally advertised in the newspapers and had written your conference chairman a letter to set the basic rate at 75 percent of what the conference rate had been, did the conference agree with that proposed rate as set by Isbrandtsen?

Mr. JAMES. No, they did not.

Mr. COWEN. Did the conference hold to their rate as it had been, sir?

Mr. JAMES. No, at that time they were open. They had opened the rates in March 1953.

Mr. COWEN. Yes, sir.

Mr. JAMES. When they opened the rates each member of the conference went out and competed with Isbrandtsen. They cut Isbrandtsen's rate and he did not like it.

Mr. COWEN. I understand that, but when the conference went back to a conference rate, did you go back to the old rate that you had been using before Isbrandtsen came in?

Mr. JAMES. I am quite sure they did not. They have not gone back yet, in fact, in that trade. They are still open.

Mr. COWEN. That trade is still open?

Mr. JAMES. They are still open, yes.

Mr. COWEN. So that the conference members themselves are competing with each other and with the independents still?

Mr. JAMES. Yes, they are all on an open basis.

Mr. COWEN. All right, sir. That is all.

Mr. JAMES. Thank you very much.

The CHAIRMAN. Thank you, Mr. James.

Mr. Pasche?

STATEMENT OF A. J. PASCHF, CHAIRMAN, ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES

Mr. PASCHE. Mr. Chairman, I had intended to appear here today and read into the record a short prepared statement and then make myself available for whatever questions the committee might see fit to ask. However, after listening to Mr. Crinkley's testimony this morning, it is perfectly evident that it is so chock full of inaccuracies that must be answered that if I should attempt to answer them today a disproportionate amount of your time must be taken up.

In our opinion, it is absolutely necessary that those inaccuracies be corrected. Rather than take that time today, I would like permission to waive the privilege of appearing and amend my statement and submit it to you in the early part of the week.

In the meantime, I would like to have it understood for the record that we heartily support the bill which is before this committee and earnestly urge its early enactment.

The CHAIRMAN. You represent the Associated Latin American Freight Conferences?

Mr. PASCHE. That is correct.

The CHAIRMAN. We will accept your statement and have it placed in the record.

(The statement referred to follows:)

STATEMENT BY A. J. PASCH ON BEHALF OF ASSOCIATED LATIN-AMERICAN FREIGHT
CONFERENCES IN SUPPORT OF H. R. 12751

My name is A. J. Pasch. I have been employed for the past 20 years as chairman of a group of conferences known collectively as the Associated Latin-American Freight Conferences, the member lines of which operate to a substantial portion of the Latin-American area. A list of these on whose behalf this statement is made is appended. Prior to my present association, I had spent 12 years with the Munson Steamship Line, the last 4 of which were as director of traffic. This followed 7 years as head of the South American and West Indies Trades Division of the United States Shipping board.

The decision of the Supreme Court appears to create a distinction between the particular type of dual-rate system which was condemned and other dual-rate arrangements which in the language of the Court "are not designed to stifle or curtail competition." If this distinction were clearly drawn, neither the witnesses who appeared last week nor the many other conference chairmen and steamship carriers submitting statements contemporaneously would need to make such submissions. However, a realistic analysis forces the conclusion that extreme cloudiness and uncertainty exists. We already have received letters from some shippers advising of cancellation of their contracts because of their belief that the Supreme Court has outlawed all agreements. Incidentally, there are in effect some 60,000 contracts in our trades. Rather than face more litigation with which we think we shall inevitably be confronted, we believe the welfare of the foreign commerce of the United States is best cared for by a forthright approach to the problem. We see no better solution at this time than support for the bill which is before your committee now. We respectfully urge its early passage.

Mr. Cocke, in his testimony Thursday, covered the general situation so well that I will not burden the record by repetition. I do wish, however, for the record, to subscribe to Mr. Cocke's remarks and would like to comment briefly on a few aspects of the matter concerning which, in my opinion, there is something less than a clear understanding.

It was stated at the hearing that there is reticence on the part of shippers to come in and testify because of fear of retaliation. This is utterly ridiculous. The thought that the conference carriers, or any of them, might entertain the idea of incurring the ill-will of a client and thus prejudice its ability to participate in that client's future business merely because the client indicates an honest view, which incidentally frequently occurs, simply cannot be given the least credence.

A good deal of language has been used in an attempt to persuade this committee that considerations which arise in conferences are dominated so far as the results are concerned by foreign-flag members. Our membership is composed of 24 lines and they are predominantly foreign flag. Some of them operate from the United States to one or more of the destination countries regularly served and also maintain separate competitive services from foreign sources of supply to these same destinations. During the 20 years that I have been associated with the conference office, despite the opportunity to favor their competitive services, there has never been the first indication that the foreign lines, singly or as a group, might even think of imposing a view on their American brothers which would be contrary to the best interests of the exporting public of the United States or the United States-flag carriers. Nothing even remotely approaching domination has ever been evidenced.

If I have correctly understood some of the other testimony, conferences generally have been accused of imposing higher rates than are needed to provide for

a reasonable return. This is pure hogwash! If there is one thing about our business which stands out prominently as being elemental, it is the certain knowledge that unless we can and do provide rates which enable our exporters to readily land their merchandise in the foreign markets, there will be no cargo to carry.

It has also been indicated that rates are constructed on the basis of the higher cost of operation of American vessels and that consequently the foreign-flag members reap a harvest. This is not so. No such indication could honestly be given by anyone having even a rudimentary knowledge of the subject.

Without going into the complex nature of rate construction, I think it is fair to state the conference activity is continuously dedicated to the construction of a fair and equitable rate structure. It seems evident that the so-called independent operators contribute nothing to this effort and that is more than amply demonstrated by the fact that when asked for quotations all they do is to say: "My rate is 10 percent below that of the conference carriers." Certainly no ingenuity or know-how is required to convey that type of message. An office boy can do it.

The decidedly adverse effect which rate wars have upon the commerce of the United States is a thing to which we are no strangers. During such periods, the exporting public is completely in the dark from day to day as to what its transportation charges are likely to be. The vices attendant upon this sort of situation are so obvious that there appears to be no need to go into a lengthy explanation of them. However, I think one important aspect that might well be highlighted is that if carriers generally are to be forced to live with a schedule of rates at a single level, they will be vulnerable to attack by cut-rate opportunists and those attacks certainly will come. Out of that situation only one result will emerge and that is that eventually the shippers with a large volume of cargo will receive the benefit of rates lower than those available to the smaller shipper, which means in turn that the smaller shipper, being unable to compete with the exporter having the larger volume, will be eliminated from the market.

It seems pertinent to observe also that history shows that during these periods of rate disturbances in our areas, not a single ton of cargo is moved which would not have moved anyway under reasonable compensatory rates. You might be interested to know that a rate war which terminated 3 years ago in one of our trades has left us in the position of attempting to negotiate our rates back to a compensatory basis. The financial effect upon the conference carriers who were left to pick up the pieces after the hit-and-run operator had withdrawn, can easily be imagined.

Certain specific statements of Mr. Crinkley, Isbrandtsen vice president, are so at variance with the fact that they are being answered seriatim.

1. The use of the conference contract dual-rate system is contrary to the general public interest

The public interest is best demonstrated by the public itself. If the contract system were opposed to such interest it is highly unlikely that the American public would have subscribed as wholeheartedly as it has to the use of that very system.

The true purpose, design and objective of the dual-rate system, entirely apart from any predatory intent is to provide to shippers expecting to have cargo to be forwarded over a period an inducement to agree in advance to ship their cargo during the contract period only via the conference lines, to afford reasonable consideration to such shippers for entering into such agreements and to provide the basis for reasonable charges to such shippers under such circumstances. Such a system provides to the conference carriers as assured volume of traffic on the basis of which the better to arrange their schedules and provide adequate and suitable services and provide for the continuing replacement of equipment with modern and efficient tonnage and affords to shippers particularly the assurance of continuance of reasonable rates and dependable service on the basis of which to do forward business.

2. The public interest will be protected only by the presence of energetic and bona fide independent competition

Just the opposite is true. Whenever nonconference competition appears, whether it be energetic or otherwise, the practice invariably is to slash conference rates. The conference is faced with two alternatives; either to ignore the competition which is unthinkable because this approach would fail to be pro-

tective of the interests of loyal contract exporters, in addition to which the conference carriers would be obliged to suffer a loss of traffic which they have spent many years, in cooperation with the public, to develop. The result, therefore, could only be a day-to-day adjustment of rates down to the level of the outside competitor. As common carriers our conferences acknowledge and are keenly aware of their obligation to extend to all shippers of the same commodity equal treatment under like conditions. It is perfectly obvious that a very substantial difference exists between the shipper who subscribes to contract terms and one who elects not to do so.

3. *Freight rates are generally established on "what the traffic will bear"*

While it is admitted that there is no precise, scientific formula for the construction of freight rates, the old psychology of exacting everything the traffic will bear went out long since with the kindred impropriety "the public be damned." The determination of rates is arrived at without regard to any cost differences which may exist between United States and foreign flag vessels. Operation of the conference system under the jurisdiction of the Federal Maritime Board and its predecessors during the past 40 years has brought about the realization that the exporting public and the carriers should be regarded as partners in the successful marketing of United States merchandise. If the conferences have erred at all, it has been to adopt rates which are more moderate than they need be in their desire to be of the utmost aid in not only maintaining a free flow of merchandise but to aid in the further development of export sales generally.

4. *An entirely insupportable comparison of the rates on tobacco and cotton in the various trades is made*

The rate on tobacco to certain European destinations was stated to be \$2 per 100 pounds whereas the rates to La Guaira, Venezuela, and Valparaiso, Chile, were reported to be \$5 and \$7.25 per 100 pounds respectively. A comparison of rates in one trade with those in another is improper unless conditions in both are substantially the same. This is rarely, if ever, the case. Tobacco moves regularly in substantial volume to Europe but insignificantly to Venezuela and Chile. Moreover, the volume of all cargo to European destinations greatly overshadows the import requirements in Chile and Venezuela and return cargoes from the latter country are by comparison meager indeed.

It was stated that with respect to a movement of some 60,000 hogsheads of tobacco to Europe a nonconference carrier had undercut the conference rate by a considerable margin despite which a satisfactory profit had been realized. What was not said, and what is really the crux of the matter, is that it suits the convenience of the nonconference operator to cut rates when a sizable volume appears. It is extremely doubtful that this carrier would be interested, if approached, in participating in the transportation of the small volume of tobacco to Venezuela or Chile even at rates materially higher than they are. Mr. Crinkley further stated that supposedly high rates in the Venezuela trade were attributable to the absence of nonconference competition in the trade. The facts are otherwise. Contrary to Mr. Crinkley's statement, there are five nonconference lines competing at cut rates in the Venezuela trade. These are among those listed below in answer to question 6.

5. *It is strongly intimated that conference members do not honor their promise and word as to maintenance of agreed rates and that no initiative or investigation is displayed in adjusting freight rates where needed*

To the best of our knowledge, no representative of Messrs. Isbrandtsen has ever participated in a conference meeting. It is therefore remarkable that they should be able to determine the extent to which the conferences have been remiss in the performance of activities for which they were formed. Except for the rare human error, which all of us must occasionally acknowledge, there is absolutely no truth to the charge that the member lines of the conferences, on behalf of which this statement is submitted, have failed to scrupulously observe their obligations.

I should like to make it known that our conferences maintain executive committees in practically all of the destination countries which we serve for the very purpose of keeping in continual touch with our consignee clientele and developing our mutual welfare generally. I also wish to make it clear that in addition to the trade development departments which are maintained by a number of our member lines individually, each of them is represented either by its own

personnel or by competent agencies in the important commercial centers of the United States. The obvious reason for these branch or agency representations is to maintain constant contact with exporters, manufacturers, export sales organizations, etc. in the interest of progressive activity.

6. *That noneconference competition is lacking in many trading areas of the world*

While it has truly been stated that the use of the dual-rate system is urgently required for the purpose of achieving stability, that desirable aim has never been completely realized. It is rather a fact that no trade area has been free of cutrate competition for any considerable period of time. The most that can be expected and hoped for under present conditions is a substantial degree of orderly conduct.

The Caribbean-West Indies area is presently serviced by the following non-conference cutrate operators: Three Bays Line, American Defense Line, American Union Transport Co., Dobar Line, Belgo-Swedish Line, T. J. Stevenson & Co., Ayo Bros., and Palmer Lines.

7. *That in order to get considerate treatment from the conference shippers need an independent in the trade because they are unaware of their rights*

Frequent contact with the traffic executives of United States exporters leaves not the slightest doubt that the public is well informed and has demonstrated ability to adequately approach sound solution of their transportation problems.

The commerce of the United States has developed rapidly and, generally, in orderly fashion, largely as a result of very close cooperation between the exporting public and the conference carriers. In the interest of further progress, let us concede that our independent critics do possess some know-how which has escaped us. Wouldn't it be better for these independents to join with us and add their special skills to ours in an effort further to develop the commerce of the United States rather than to use this knowledge, if it really exists, destructively?

MEMBER CONFERENCES OF ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES

Havana Steamship Conference

Santiago de Cuba Conference

United States Atlantic and Gulf-Haiti Conference

United States Atlantic and Gulf Ports-Jamaica (B. W. I.) Steamship Conference

United States Atlantic and Gulf-Venezuela and Netherlands Antilles Conference

Leeward and Windward Islands and Guianas Conference

East Coast Colombia Conference

Atlantic and Gulf-Panama Canal Zone, Colon and Panama City Conference

Atlantic and Gulf-West Coast of Central America and Mexico Conference

Atlantic and Gulf-West Coast of South America Conference

Havana Northbound Rate Agreement

West Coast South America Northbound Conference

The CHAIRMAN. We will hear from the Maritime Board, Mr. Stakem and Mr. Guill.

STATEMENTS OF BEN H. GUILL, VICE CHAIRMAN, AND THOMAS E. STAKEM, JR., MEMBER, FEDERAL MARITIME BOARD, ACCOMPANIED BY E. ROBERT SEAVER, GENERAL COUNSEL, MARITIME ADMINISTRATION AND FEDERAL MARITIME BOARD; AND LLOYD TIBBOTT, CHIEF, REGULATION OFFICE, FEDERAL MARITIME BOARD, DEPARTMENT OF COMMERCE

Mr. GUILL. Mr. Chairman and members of the committee, I have Mr. Lloyd Tibbott with us also of the regulatory branch. Mr. Tibbott is chief of our regulation section. We have Mr. Bob Seaver, who is our General Counsel. Also in the room we have members of our staff on Government Aid, if there is any question to be asked on the subsidy which has been bandied around some since we have been here.

The CHAIRMAN. All right.

Mr. GUILL. Mr. Chairman, I have a prepared statement. I also have the answers to some of the questions that were raised this morning, particularly by the Department of Agriculture and by the gentleman from the Farm Bureau where in your questioning of the gentleman from the Farm Bureau on the basis of did he favor this legislation, he stated that he thought maybe in the interim period that the competition might be eliminated from the various services which would be harmful to the agriculture and to the farmer.

The CHAIRMAN. Wait just a minute.

Will you repeat that, Mr. Guill?

Mr. GUILL. As you recall, this morning the witness from the Farm Bureau stated that he felt that he could not be for this resolution because competition might be eliminated in the 2-year study period.

I would like to point out to you, Mr. Chairman and the gentlemen of this committee, that the Federal Maritime Board will not approve a dual-rate system which destroys the independent and I give you for an example the Trans-Pacific Conference case which we just had on a dual-rate structure in which Isbrandtsen was complaining about the dual-rate system being inaugurated and the Board denied the conference that right to put into effect the dual-rate system because we found in the hearing that Isbrandtsen was carrying less than 10 percent of the amount of cargo in the trade. In other words, Board approval is given only after hearings and investigation.

I would like to say that we appreciate the opportunity to testify on behalf of the Board in regard to H. R. 12751, in which the Federal Maritime Board is vitally interested.

On May 19, 1958, the Supreme Court decided, in *Federal Maritime Board v. Isbrandtsen, et al.*, that Congress did not intend by the Shipping Act, 1916, to authorize the Federal Maritime Board to approve the dual-rate system of ocean freight rates in foreign commerce that was involved in that case.

The dual-rate system employed by the Japan-Atlantic and Gulf Freight Conference provided a discount of 9½ percent to shippers who entered into contracts to ship exclusively on conference vessels. The Board's approval of the system under section 15 of the 1916 act was reversed by the Supreme Court on the ground that such a system, designed to curtail competition from lines outside the conference, was unlawful under section 14, third, as a "resort to * * * discriminating or unfair methods."

Gentlemen, the decision casts grave doubt on the legality of most of the dual-rate systems presently employed by steamship conferences. It will, I believe, create a chaotic condition in regard to ocean shipping and the regulatory functions of the Board because of the precipitous change it will bring about in shipping practices engaged in with the sanction and approval of the Board and its predecessors for the last 40 years.

The purpose of the bill under consideration, H. R. 12751, is merely to maintain the status quo for 2 years, while Congress will study the merits of the conference dual-rate systems. Neither the purpose nor the effect of the bill is to overrule the judgment of the Supreme Court, because the issue before the Court was not the merits or the propriety of the dual-rate system. The only issue was whether Congress, in 1916, intended to permit the Board to approve such systems.

As a matter of fact, the court of appeals give some recognition to the value of the dual-rate system in the case that ultimately gave rise to bill under consideration, when it said:

True it is, as the Board urges with much persuasion, the dual-rate system may be very potent in promoting stability and regularity of service and may be warranted by competitive considerations; but when at the same time the system constitutes retaliation and is also discriminatory it runs into the barrier of section 14, third, however desirable it otherwise might be.

The only question presented by the bill is whether Congress should insure against the immediate, wholesale striking down of these systems, before any study is made as to the advantages or disadvantages of the system in the circumstances that exist today. It seems to me that the very fact that the system has so successfully withstood the test of time is ample justification for this limited extension. It has permitted self-regulation of freight rates in foreign water-borne commerce, under the regulatory supervision of the Board, and has contributed to rate stability and the provision of regular transportation service at reasonable cost in our foreign commerce. We respectfully suggest, therefore, that all that should be required in these circumstances, is a *prima facie* showing of the advantages of the system, and I believe such a showing has been made.

The urgent reason for prompt action on the bill, therefore, is, of course, because of the great harm to shippers and shiplines which may take place before the next Congress even convenes. We apprehend that the Supreme Court decision will give rise to an immediate rush of litigation before the Board and the courts, unless the status quo is maintained pending further study by the Congress and all concerned with this critical problem.

The Board believes that enactment of this bill is vital to preserve stability of rates and services in the ocean-going foreign commerce of the United States and recommends that it be passed.

The Shipping Act, 1916, which this bill would amend, provides a statutory scheme especially designed to regulate an industry recognized to be unique in its international character, in its mobility, and in its nonsusceptibility to direct Government control.

Two things stand out in the legislative history of the Shipping Act, 1916:

First, it is apparent that Congress recognized that it was not feasible to have ocean freight rates in foreign commerce directly regulated by an agency of the United States Government. One of the predecessor bills to the ultimately enacted shipping bill provided for prescription of just and reasonable rates and for ship licensing in foreign commerce by a Government agency. This provision, however, was rejected after it was explained that it was not practical.

Second, Congress was aiming at a pattern of regulation which would prevent, on the one extreme, uncontrolled competition which would result in chaos in rates and services and, on the other extreme, unregulated carrier combinations. The legislative history stresses the absolute necessity to the American shipper of stable rates and service. The Alexander committee, upon whose investigation and report the Shipping Act was based, found that the conference system, subject to the supervision of a Government agency, was the one force which could achieve these results.

For that reason, Congress, by section 15 of the Shipping Act, 1916, authorized the continuation of conferences in our foreign trade and provided for their regulation. But when competition becomes severe, conferences can only maintain their rate structures if they have some method of defending themselves against those carriers who are outside the conference and cut rates. The outside carrier who cuts rates can make money because of the conference "umbrella." That is, the conference members must all maintain the same rates and each obtains his share of the cargo available largely on the basis of the service he offers without rate advantage. But the outsider, by cutting rates, can obtain a disproportionate share of available cargo and fill otherwise empty space with cargo that represents profit to the extent that the revenue therefrom exceeds the costs of loading and discharge. Usually the presence of the outside line does not have the effect of controlling the level of rates, because he merely maintains his rates at a percentage under the conference rates. Thus, the main advantage to the consumer that is normally brought about by healthy competition is not present here. Nor does the presence of the outsider increase the volume of cargo moving in the trade—such rate cutting draws so much cargo that the conference lines can no longer operate successfully, the conference lines must soon abandon the conference rate structure, and a rate war ensues. Thus, to effectively keep rates stable, the conference must have some competitive defense against rate cutting by nonconference lines and tramps.

The Supreme Court decision leaves grave doubt as to whether the Board can approve any dual-rate system which is found necessary to meet outside competition threatening to precipitate a rate war. While the applicability of the decision to specific facts can only be determined after full hearings, I can say at this time that the Supreme Court decision leaves an area of serious uncertainty in regard to the legality of many dual-rate systems now in use. The very existence of this uncertainty will be a disrupting factor for the future planning of ship lines and shippers.

The result of the Supreme Court's ruling can be a series of full-fledged rate wars in our foreign trades. It is essential to note that the great bursts of maritime activity which have taken place worldwide since the end of World War II have resulted in the reestablishment of merchant marine capacities which, in the case of most of the leading maritime nations, are considerably higher than their pre-World War II levels. This, together with the currently depressed volumes of cargoes in world trade, has resulted in temporarily over-tonnaged conditions in many of the essential foreign trade routes of the United States. In each such trade route, the potential exists for chaotic rate wars unless stability can be insured by the continuing use of dual-rate systems, or some other regulation of rates.

It may interest the committee to know that after the courts restrained the use of the dual-rate system of the Japan Atlantic and Gulf Freight Conference, and while it was before the Board, the members of that conference abandoned the tariff which they had been observing in favor of rate war conditions in which each line sought to secure whatever traffic it could by charging "fighting" rates. As a result, Isbrandtsen, the independent price cutter, was virtually eliminated as an effective carrier in the trade, for it was itself unable—

once the conference tariff was abandoned—to meet the reduced rates forced by the resulting open competition.

It may be asked whether the return to free ocean competition would not be best for American importers and exporters. The answer is no. Shippers now, as in the days of the Alexander committee investigation, need dependable service at stable and reasonable rates much more than they need the fluctuating, but lower, rates created by an unstable transportation market. Their preference has invariably been for stable rates which permit them to foresee and calculate their transportation costs—rather than for unstable rates which, although at times are cheaper, are unpredictable. Fluctuating, open competitive rates introduce a speculative element into foreign trading and leaves exporters and importers uncertain whether their competitors are shipping at a lower rate. Shippers and receivers need to rely on forward sales, and resale prices are often fixed by importers months in advance of arrival of imported merchandise in the United States. Where transportation rates fluctuate, buyers cannot purchase or fix resale prices in advance because of the fear that their competitors who buy later may obtain cheaper shipping costs and thereby have a competitive advantage. Such conditions retard business.

Another reason many shippers desire stability is that they need frequent regularly scheduled sailings. But the losses that carriers incur as a consequence of rate wars prevent them from providing such services—in fact the usual result is that some of the carriers are forced out of the trade either through abandonment of nonprofitable services or by bankruptcy.

In the Japan-Atlantic case, the Board summarized the disadvantages to shippers of unstable rates, as follows:

Many Japanese shippers have requested the conference to close rates and to end the rate war. The instability resulting from the rate war has adversely affected the smooth flow of commerce between Japan and the United States; has raised a threat that customs duties on Japanese products in the United States might be increased; has affected the value of inventories of Japanese goods in the United States; and has caused requests for postponement of shipment by f. o. b. buyers in the United States, since such buyers assume the risk of fluctuating freight rates. Resale prices of Japanese goods are often fixed by the importers as much as 6 months in advance of their arrival in the United States.

Similar testimony which shows that shippers need stable rates rather than disruptive rate competition is included in many of the proceedings before the Board.

Abandonment of conference tariffs, which may well result from the prohibition of dual rates in many trades, will not create permanent rate reductions. To the contrary, ocean transportation has not changed so radically that we cannot be guided by the following finding of the Alexander committee:

The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines. To terminate existing agreements would necessarily bring about 1 of 2 results: The lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong or, to avoid a costly struggle, they would consolidate through common ownership.

In 1950 the Senate Committee on Interstate and Foreign Commerce conducted a study of various aspects of the merchant marine, includ-

ing the regulation of freight rates and foreign commerce. The committee's report of its study (Rept. No. 2498, 81st Cong., 2d sess.) states on page 85 that in World War II the shipping conferences provided an instrumentality through which effective control of overseas rates was made possible and that the enhancement of the value of shipping space as a result of the war was not allowed to run the wild course it did during the First World War. The report goes on to state on page 85:

On general cargo, for example, the increase during the first war, when rates were "what the traffic would bear" went up 1,117 percent, while rates during World War II on general cargo went up only 70 percent. And despite tremendous increases in costs of ship operation in the period between the two wars, the actual rate on general cargo in 1918 reached \$66 per ton, while during the more recent World War II, it never exceeded \$31.50 per ton on the North Atlantic-Europe run, for example. The record is replete with similar comparisons, but suffice it to say that with American participation in the trade route, and with conference discipline an established fact, government who paid rates more in line with costs of operation rather than rates designed to permit excessive profiteering as a result of war enhancement.

An informative tabulation of freight rates between 1921 and 1923 is set out on page 232 of the report.

H. R. 12751 does not grant the Board authority to approve new dual-rate systems. Its purpose is simply to maintain the status quo by allowing conferences which now use the dual-rate system to continue its use and thereby prevent the chaos which will be the result of a wholesale abandonment of the system. Under this bill, precise regulatory safeguards are preserved by authorizing the Board to protect the public by disapproving and dual-rate system now in use which does not meet the standards of section 15; namely, that to be continued use the system must not—

be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of the Act.

The reference to "violation of the Act" obviously is not deemed to refer to section 14, as interpreted by the Supreme Court, because such reference would negate the purpose of the bill.

Mr. Chairman, we wholeheartedly endorse the bill, H. R. 12751 which is before you.

The CHAIRMAN. That is a pretty strong statement, Mr. Guill.

Mr. Pelly?

Mr. PELLY. I agree with you that Mr. Guill has made a very strong case and statement for this particular legislation.

The CHAIRMAN. That represents the unanimous opinion of the Board, does it?

Mr. GUILL. That represents the unanimous opinion of the Board, sir.

Mr. STAKEM. Yes, it does, Mr. Chairman.

The CHAIRMAN. Mr. Mailliard?

Mr. MAILLIARD. Mr. Guill, you describe in your statement what the Board believes might be the result of allowing the Supreme Court decision to stand without any expression of congressional intent. You describe it as probably pretty chaotic. What would widespread rate wars do to the American-flag lines' present ship-replacement program? Would it have any effect on it?

Mr. GUILL. Well, I will say this. One of the men in one of the steamship companies expressed it rather well the other day when he said, "We have some fat. That is true. We have a good many millions of dollars in our special reserve fund." He said, "We can either use it to build ships or we can use it to fight rate wars."

Obviously, under the law the American flag steamship companies have the right to dip back into their special reserve funds to take care of any losses they have. Fundamentally that would have an effect on their replacement program because that is the tax deferred money they have been allowed to put in their reserve fund to replace these ships at the end of their operating subsidy contract.

Mr. MAILLIARD. The Maritime Administration has been pretty actively engaged in the last year or two with even attempting to speed up the statutory requirements of ship replacement with some degree of success, as I picture it.

Mr. GUILL. We are very pleased. We have finished writing contracts. I have a list of them here. We have signed up about five.

Mr. STAKEM. I think it is a good many more than that, Mr. Guill. The major lines have already been signed up to a replacement obligation of their present fleets. The Board is in active negotiations with the remaining lines to enter into long-term contracts with the Board which will call for the replacement of their fleets.

Mr. MAILLIARD. This program represents an acceleration, as I understand it, as against the statutory requirements, in many instances.

Mr. STAKEM. In many instances it does. As we spread out the construction of the ships, Congressman Mailliard, it may be that some of the ships will go beyond their statutory life of 20 years, but the Board's purpose in doing that is to spread the work over a 15-year period and the net result will be that a number of units of the present fleets will be accelerated in their replacement.

Mr. MAILLIARD. So that where some may go beyond their 20 years others will be replaced in advance of 20 years?

Mr. STAKEM. That is correct.

Mr. GUILL. Congressman, these contracts have been made with the shipyards: American Export Lines have made contracts and are proceeding to build 4 cargo vessels; American President Lines, 2; Lykes Bros. Steamship Co., 5; and Moore-McCormack Lines, 4. That is a total of 25 vessels where contracts have been placed with the yards, also 2 combination vessels being built for Grace Line and 2 for Moore-McCormack. We have a total of 19 vessels that are now practically under construction.

In the calendar years that we have here, and if you are interested in it for the record I can give it to the reporter for the record later, we show how it is set out on cargo vessel replacement from now through 1967.

Mr. MAILLIARD. The point I was trying to make with both of you gentlemen representing the Board is that from your discussions with the operators, do you feel that the failure to pass the bill that is now before us, thereby creating the situation that you anticipate in your statement, might make it more difficult for you to continue to make these arrangements with these companies who have to invest substantial sums of money?

Mr. GUILL. I would like to answer that question, if I may, sir, in this way. We have a clause in each contract with the operator

called economic feasibility. Now, right now we do not want to cross that bridge before we get to it because we want these ships built and I would say as of right now we hope something does not happen but if this bill is not passed, it may well raise the ugly head of economic feasibility, should we build these vessels right now or will there be enough money in the reserve fund to do it?

Mr. MAILLIARD. Let me put it more specifically. If some of these companies that now intend to engage in substantial construction programs were to be forced into rate wars, they could obviously raise this question of economic feasibility in order to get out from under if they cannot make a profit.

Mr. GUILL. They not only could obviously raise it. They will raise it. I can see that now, sir.

Mr. MAILLIARD. So that this shipbuilding program which is important both from an employment and economic point of view to the Nation but also very important to defense because we are upgrading our American-flag merchant marine is involved in this question.

Mr. GUILL. Yes, sir.

Mr. MAILLIARD. That is all, Mr. Chairman.

Mr. GUILL. I would also like to state that in our special reserve fund today by law it cannot be depleted down to less than 5 percent, of the capital necessarily employed by the various companies, but there is some \$111 million that is in this special reserve fund that has been earmarked for new construction.

We would certainly hate to see any of that money dissipated because of a rate war.

Mr. MAILLIARD. I have no more questions.

The CHAIRMAN. Mr. Allen.

Mr. ALLEN. Mr. Chairman.

Mr. Guill, it seems to me proper that the record should show that the statement which you have made not only reflects the views of the agency of Government which has to do with the regulation of shipping and consideration of the problems of our merchant marine but is also made in the light of the fact that you and Mr. Stakem have been present throughout these hearings and make your statement in the light of all the testimony that has been made available to this committee. That is the fact; is it not?

Mr. GUILL. That is the fact.

Mr. STAKEM. That is the fact, Mr. Allen.

Mr. GUILL. Mr. Morse would have been present, too, but he has been at the meeting of the industrial planning mobilization group at the war college in Rhode Island.

Mr. ALLEN. Mr. Stakem, I believe that before you became a member of the Board you had also been a part of the staff of the Maritime Administration and Maritime Commission for a number of years; is that true?

Mr. STAKEM. That is right, Mr. Allen.

Mr. ALLEN. During those years did you have experience with this problem of conferences at all?

Mr. STAKEM. No; my day-by-day experience in conference work has been only in the last 2 years that I have been on the Board, but we have had so many questions come up with respect to it that I am

familiar with this question and heartily endorse the views that Mr. Guill has stated here.

Mr. ALLEN. Thank you.

The CHAIRMAN. In addition to your interest as a part of the Department of Commerce, you are vitally interested in the economic overall welfare of the United States, I presume.

Mr. GUILL. Yes, sir.

The CHAIRMAN. If this chaotic condition were to occur, and the contractors negotiating now were to withdraw their contracts, what effect would that have on the economy of the country at the present time?

Mr. GUILL. That is a little difficult to answer, Mr. Chairman. I do know that at this time with our past appropriations we have some \$130 million earmarked for this new construction which I outlined a few moments ago and I do not think you can take that much money out of the economy without causing serious trouble.

However, we do not anticipate that. It would be more or less on the future commitments of the builders, sir.

The CHAIRMAN. In other words, there is the possibility that there would be no further negotiating of construction by the operators with the shipyards?

Mr. GUILL. Well, I will say again that there is the economic feasibility clause which is a powerful one and while certainly Mr. Stakem nor I nor Mr. Morse would want to make any statement about that at this time because that is something we would have to deal with at the moment, looking at and hearing the history of past rate wars that have taken place, it gets down to where the companies do not make any money at all and fast lose their profits that they have put by from better years.

The CHAIRMAN. They are excused then under the clause you mentioned from further contractual building?

Mr. GUILL. Even though the Government guarantees a mortgage, we have to make an economic feasibility finding before we can say it could be gone ahead with.

The CHAIRMAN. That was in my mind but I wanted you to say it. You cannot then allocate this money that is already appropriated?

Mr. GUILL. Well, we could allocate the money to pay the Government's share that is appropriated but the private operator has to go out in the private money market and get his own money to build his share of that ship.

The CHAIRMAN. Mr. Morse has to determine under the mortgage guarantee program whether the construction is economically feasible?

Mr. GUILL. That is right. In other words, if the Government guarantees the mortgage to the bank or to the insurance company, or whoever loans the operator the money, they have to make a finding that they are going to be able to repay that money or else the Government has to pick up the tab.

The CHAIRMAN. In the light of the predicted rate war, could Mr. Morse make that finding?

Mr. GUILL. Of course I cannot speak for Mr. Morse but I would think it would be difficult.

The CHAIRMAN. If you were in his position, could you?

Mr. GUILL. I would say, sir, that, if I were in his position and a company were losing money and were having to go to their special reserve and use money they had put by for construction purposes and the times began to be more and more difficult, I would be a little afraid to put the Government's name on a mortgage, guaranteeing said mortgage.

The CHAIRMAN. Do you have questions?

Mr. COWEN. No, sir.

The CHAIRMAN. Thank you, gentlemen, very much.

Mr. GUILL. Thank you, sir.

The CHAIRMAN. There are those present whom we have not been able to give a chance to express their feeling pro or con for this resolution. If you stand up I will get the names of all those who desire to file a statement.

Will you call out your names, sir?

Mr. TURK (Elkan Turk, Jr., counsel, the Far East Conference). Elkin Turk, Jr., counsel for the Far East Conference.

Mr. Chairman, Mr. J. A. Dennean, chairman of the conference has been in attendance until this afternoon's session. He had to catch a plane.

On behalf of that conference, we would like to have the privilege of submitting a statement early next week.

The CHAIRMAN. Is that for or against this resolution?

Mr. TURK. That is emphatically in support of H. R. 12751.

(The statement of James A. Dennean follows:)

STATEMENT OF JAMES A. DENNEAN, NEW YORK CITY, CHAIRMAN, FAR EAST CONFERENCE AND CHAIRMAN, NEW YORK COMMITTEE OF INWARD FAR EAST LINES IN SUPPORT OF H. R. 12751

I am the chairman of the Far East Conference, 11 Broadway, New York City, N. Y. I am authorized to make this statement on behalf of all 25 members of the conference, whose names are appended hereto. This conference operates under Federal Maritime Board Agreement No. 17, which was approved by the United States Shipping Board on November 14, 1922. It governs the establishment of freight rates in the trade from United States Atlantic and Gulf ports to ports in Japan, Korea, Formosa, Indochina, Hong Kong, and the Philippine Islands and, to the extent that governmental policy permits and economic conditions warrant, to Siberia, Manchuria, and China. I am also chairman of the New York Committee of Inward Far East Lines. This group, acting under Federal Maritime Board Agreement No. 5500, approved October 2, 1936, represents in the United States the several conferences located in the Far East which establish rates in the trades homeward from the Far East to United States Atlantic and Gulf ports.

I am making this statement in order to urge respectfully but earnestly that H. R. 12751 be promptly enacted in order to prevent the consequences which would follow if dual-rate contract arrangements should be held illegal as a result of the decision of May 19, 1958, in the Japan-Atlantic and Gulf Freight Conference case. The Far East Conference, over its long history, has experienced the utter disruption of rate structures, rate instability and chaos which follow from nonconference cutrate competition when the conference is not employing a reasonable but effective dual rate contract arrangement. When this demoralization of the trade occurs, the conference carriers who have the long-range interest in maintenance of adequate, regular and dependable service, are deprived of the revenues required to enable them to maintain the services and replace the obsolescent vessels with improved tonnage to meet the needs of the trade. Also the merchants who conduct business on a forward trading basis over long periods in long-voyage trades such as this one are utterly unable to predict the freight cost element in their sales price in the case of exports and their landed cost in the case of imports, and the commerce of the United States suffers.

The experience of the Far East Conference in the early 1930's is officially reported in Section 19 Investigation, 1935 (1 U. S. S. B. B. 470 (1935)). We will be prepared to introduce full evidence regarding the conditions which led to the necessity for a dual rate contract arrangement when hearings are called for a thorough investigation of shipping matters. Suffice it here to say that from its beginnings in 1922 until about the year 1928, the Far East Conference had been able on a single rate basis to establish and maintain rate stability. In 1928 the Isbrandtsen-Moller Co. entered the Far East trade with Danish-flag vessels and cut rates generally by 10 percent. As a result, the traffic of the conference lines was drained away and their attempts in various directions to offset the effect of this cut-rate competition proved unavailing. Indeed, the introduction of a dual-rate system with an insignificant spread between the contract and noncontract rates provided no relief. The situation became so aggravated that at one time all but two of the members of the conference resigned. Rates plunged to unheard-of depths. Such basic commodities as cotton piece goods and automobiles were being transported from United States Atlantic coast ports to the Far East for as little as \$4 per ton. On some of the lines the rates were changed many times during the loading of a single vessel and no one could tell in the morning what the rate on any item would be before nightfall.

In 1934, when these conditions proved intolerable, a really effective dual-rate contract arrangement was introduced. Rate stability was almost the immediate result; but it was years before the level of rates again approached that which had prevailed before the cut-rate competition had entered the field. I sat as a line representative in Far East Conference meetings during this entire period and what I say to this committee on this subject is the result of actual, but bitter experience. This experience convinces me that, if the result of the Supreme Court decision should be, as feared by shippingmen, that many dual-rate contract arrangements will be halted pending the result of a long-range study of shipping, conditions such as I have above described in the Far East trade will come to prevail in large segments of American commerce. The result would not alone be serious detriment to the carriers involved, but as well an interruption of the free flow of commerce between our country and other friendly nations. Even if it should be held that some dual-rate contract arrangements do not fall within the condemnation of the recent Supreme Court decision, such result will definitely be achieved at the cost of long-drawn-out, bitter and expensive litigation. Only the adoption of H. R. 12751 can save our shipping and our commerce from complete chaos and the corresponding losses.

Apart from the benefits to the supporters of this bill, which we have detailed above, we would like to point out that its passage can injure no one. Its purpose is only to maintain a *status quo*.

Before concluding, I would like to refer to earlier testimony in the record regarding the domination of conference action by foreign lines, the implication being that their interests are inconsistent with the promotion of United States commerce. While the Far East Conference consists of 25 lines, 6 of which are American-flag lines, in my experience in observing conference action, which dates back to 1928 (since January 1, 1946, I have been chairman of the conference), there has never been any domination of conference action by foreign-flag lines. Conference action on rate matters is taken by majority vote. The non-American lines operate under the British, Dutch, Danish, Norwegian, Swedish, French, Philippine, and Japanese flags. I have never seen the representatives of lines flying these diverse non-American flags join on the basis of nationality to vote as a bloc. It remains only for me to respond to some of the testimony put forward on behalf of the Isbrandtsen Co.

Mr. O'Conner testified that the extension of the Far East dual-rate contract arrangement, with its \$4-per-ton differential to cotton, compelled all cotton shippers to become contract shippers. Quite the contrary is the fact. The Far East Conference did not extend its contract system to cotton until it received a request of the American Cotton Shippers Association to do so. I am informed and believe that this action by the Cotton Shippers Association was taken on substantial unanimous consent at an annual convention of the association.

The Isbrandtsen witnesses gave testimony which was intended to create the impression that conference ratemaking procedures are not responsive to the requirements of shippers, and result in exorbitant profits for foreign-flag operators. By way of contrast, it was sought to picture the independent operator as promoting the movement of traffic and protecting the shipper against the exactions by the conference. Neither representation is accurate.

Speaking for the Far East Conference, I can definitely assure the committee that shippers make suggestions regarding freight rates and that we have established a procedure by which either the shippers provide all of the detailed information regarding weight, measurement, value, prospective volume of traffic, rates from competitive foreign origins, and other data, or the conference office itself ascertains whatever factual data are relevant. It is on the basis of this information, and not on the impossible basis of anyone's cost-plus-a-profit, as was suggested by Mr. O'Connor, that our rates are established and changed. Our ultimate objective is to establish rates which will enable the traffic in our trade to move freely. Only in this way can any line make a profit.

The Isbrandtsen complaint that the conference system enables the foreign-flag lines to realize inordinate profits would seem to require that two levels of rates should be established—the higher for transportation on American-flag vessels and the lower for transportation on foreign-flag vessels. I suppose that I need not stress the point with this committee that on any such basis of rate-making the foreign-flag lines would obtain substantially all of the business, and with vessels completely full, would realize huge profits indeed.

Regarding the role of the "independent," it is our experience that nonconference rate practices are purely parasitic and less regardful of the plight of the shipper than our conference rates. In dockets Nos. 726, 733, 734, and 735, before the Federal Maritime Board, the evidence was clear that in times when the steamship business is bad, Isbrandtsen and its predecessor company has regularly quoted rates which were 10 percent below conference rates, whereas in time of international difficulties and war, when the steamship business is good and shippers have trouble finding shipping space for their cargoes, Isbrandtsen has charged as much as the conference, and sometimes a little bit more.

Mr. Crinkley sought to justify Isbrandtsen's 10 percent rate cutting by asserting that this policy was pursued only in trades where a conference was using a dual-rate contract arrangement. This just is not the fact. In the outward Far East trade, Isbrandtsen-Moller Co., Isbrandtsen's predecessor, followed a policy of cutting conference rates 10 percent from the time it entered that trade in 1928, when the conference was using a single scale of rates. The Supreme Court opinion in the Japan-Atlantic and Gulf Freight Conference case recites, on the basis of the Board's findings, that from 1947 to 1953 Isbrandtsen made a practice of cutting conference rates 10 percent. (See Supreme Court opinion, p. 3). The Japan-Atlantic and Gulf Freight Conference first gave consideration to the postwar reestablishment of a dual-rate contract arrangement in 1950.

I will not undertake here to combat the numerous other inaccuracies which appear in Mr. Crinkley's statement concerning the merits of the dual-rate system. We understand that the committee intends, at a later date, to conduct a thorough-going investigation into that subject which will afford us an ample opportunity to produce the facts. One point made by Mr. Crinkley, however, appears on its face to be so plausible as possibly to carry conviction unless the fallacy thereof should be exposed. Mr. Crinkley states that the "independent" affords stability as great as that offered by the conferences. Of course, an independent's tariff which is computed by deducting 10 percent from stable conference tariffs would, as a matter of mathematics, be stable—but this is a result of the parasitic character of the business of the "independent." Once the tactics of the independent have resulted in destroying the stability of the conference rate structure, the stability of the independent's rate structure will also inevitably disappear and the independent will lose a substantial portion of its carryings. (See Supreme Court opinion, p. 6.)

The foregoing is but a brief outline of the facts upon the basis of which I most respectfully urge the committee to make a favorable report with respect to H. R. 12751.

MEMBERS OF THE FAR EAST CONFERENCE

American President Lines, Ltd.

The Bank Line, Ltd.

Compagnie de Transports Oceaniques.

Daido Kaiun Kaisha, Ltd.

De la Rama Lines, joint service of :

The de la Rama Steamship Co., Inc.

The Swedish East Asia Co., Ltd.

The Ocean Steamship Co., Ltd.

The China Mutual Steam Navigation Co., Ltd.

Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V.

"Ellerman and Bucknall Associated Lines," point service.

Fern-Ville Far East Lines, joint service of :

Skibsaktieselskapet Varild.

Skibsaktieselskapet Marina.

Aktieselskabet Glittre.

Dampskibssinteressentskabet Garonne.

Aktieselskabet Standard.

Fearnley & Egers Befragtningsforretning A/S.

Skibsaktieselskapet Sangstad.

Skibsaktieselskapet Solstad.

Skibsaktieselskapet Siljestad.

Dampskibssaktieselskabet International.

Skibsaktieselskapet Mandeville.

Skibsaktieselskapet Goodwill.

Iino Kaiun Kaisha, Ltd.

Isthmian Lines, Inc.

Ivarian Lines, Far East Service, joint service of :

Skibsaktieselskapet Igadi.

Aktieselskapet Ivarans Rederi.

Aktieselskapet Lise.

Kawasaki Kisen Kaisha, Ltd.

Lykes Bros. Steamship Co., Inc.

Mitsubishi Kaiun Kaisha, Ltd.

Mitsui Steamship Co., Ltd.

A. P. Moller-Maersk Line, joint service of :

Dampskibsselskabet af 1912, Aktieselskab.

Aktieselskabet Dampskibsselskabet Svendborg.

Nippon Yusen Kaisha.

Osaka Shosen Kaisha, Ltd.

National Development Co.

Philippine National Lines.

Prince Line, Ltd.

Shinnihon Steamship Co., Ltd.

States Marine Lines, joint service of :

States Marine Corp.

States Marine Corporation of Delaware.

United States Lines Co.

Waterman Steamship Corp.

Wilhelmsens Dampskisaktieselskab.

A/S *Des Norske Afrika, og Australielinie.*

A/S *Tonsberg.*

A/S *Tankfart I.*

A/S *Tankfart IV.*

A/S *Tankfart V.*

A/S *Tankfart VI.*

Joint service using trade name "Barber Line."

Yamashita Kisen Kaisha, Ltd.

Mr. PAGE (Paul Page, North Atlantic and other conferences). I speak for Charles H. Andrews, chairman of the North Atlantic and other conferences. Mr. Andrews was forced to leave the meeting by important business. He would like to file a statement strongly supporting the prompt enactment of this bill.

I will be able to file it by Monday.

The CHAIRMAN. That will be all right, sir.

(The statement of Charles R. Andrews follows:)

STATEMENT OF CHARLES R. ANDREWS, CHAIRMAN, ON BEHALF OF THE MEMBER LINES OF THE TRANS-ATLANTIC ASSOCIATED FREIGHT CONFERENCES, NEW YORK, N. Y., IN SUPPORT OF H. R. 12751

My name is Charles R. Andrews and I am chairman of the Trans-Atlantic Associated Freight Conferences, 80 Broad Street, New York, N. Y. I, as chairman, administer the affairs of a group of six separate and distinct eastbound steamship freight conferences operating under agreements approved by the Federal Maritime Board or its predecessors, namely:

North Atlantic Baltic Freight Conference (agreement 7670) operating to Baltic-Scandinavian ports.

North Atlantic Continental Freight Conference (agreement 4490) operating to Belgium, Holland, and Germany.

North Atlantic French Atlantic Freight Conference (agreement 7770) operating to French Atlantic ports.

North Atlantic Mediterranean Freight Conference (agreement 7980) operating to various Mediterranean ports.

North Atlantic United Kingdom Freight Conference (agreement 7100) operating to United Kingdom and Irish ports.

Atlantic & Gulf Red Sea & Gulf of Aden Freight Conference (agreement 7530) operating to Suez and ports on the Red Sea and Gulf of Aden.

It may be of some special interest to note that 11 American lines are included in the membership of these conferences. In the several conferences the American sailings constitute up to 45 percent of the total. Their average proportion is 32 percent.

It is necessary for the proper conduct of the affairs of each conference to have a conference office and conference staff to carry out the decisions. These several and individual conferences have associated themselves for purposes of economical administration in a conference known as the Trans-Atlantic Associated Freight Conferences (agreement 12) of which I am also chairman.

Our conference office, maintained solely on behalf of the member lines, has been in continuous existence for more than 80 years. I have been continuously employed by the Trans-Atlantic Associated Freight Conferences since 1922 and have been chairman since 1943.

Our conferences are voluntary associations open to all common carrier steamship lines, regardless of flag, operating regularly in a particular trade within the area in which the conferences function, and are the mediums through which member lines jointly establish uniform reasonably stable rates and practices.

The functional purposes of these conferences may be summed up as follows:

- (1) Promotion and development of American foreign maritime commerce.
- (2) Stabilization of rates and competitive practices so as to provide and encourage regular and dependable sailings and services.
- (3) Maintenance of harmony among the member lines in the interest of avoiding unreasonable and destructive competition prejudicial to United States foreign commerce.

Uniform stabilized rates, at reasonable rate levels, permit merchants to make forward sales commitments with assurance as to rates and sailings. At the same time they give carriers some assurance of earnings adequate to enable them to provide frequent and regular sailings and to improve their services. No direct governmental control has been established over the measure of ocean freight rates in foreign trades and it is only by means of this device of self-regulation approved and encouraged by the Shipping Act, 1916, that the Federal Maritime Board gets its jurisdiction.

The dual-rate system was adopted by several conferences merely to protect and maintain their stabilized rate structure from predatory attack by nonconference lines.

In support of the above outlined conference procedures and practices which have long been in effect to the mutual benefit of carriers and merchants alike, I have been authorized and directed by our several conferences to register their strong backing of H. R. 12751.

On behalf of these several conferences I make the following observations:

1. The May 19 Supreme Court decision in the Japan-Atlantic case is at minimum confusing. The conferences which I represent may well feel that they are in no sense predatory and that their dual rates do not have the purpose of curtailing or stifling competition. This would seem to be the case here in fact as well as theory for their outside competition has increased notwithstanding the use of contract rates and some conference members have withdrawn. However, there are those who refer to broad generalizations in the Supreme Court opinion to support their position that all contract rate systems are per se illegal.

2. The very real uncertainty arising out of the Supreme Court decision subjects these conferences and all others to potential suits instituted by the Department of Justice, as well as private individuals and to numerous claims for freight refunds and reparations. Some of these have already been received. It is anticipated that the legal controversies and complications arising out of this decision will be not only numerous but of great complexity.

3. The uncertainty as to whether the contract rates or indeed any specific rates can or will be maintained in the future or if so for how long presents a new and serious hazard to merchants in their forward trading programs.

4. The more than 35,000 contracts with merchants signed on behalf of these conferences represent an important and serious undertaking on the part of the conferences and substantial rights on the part of merchants which cannot be likely overlooked or left in limbo while protracted litigation is being carried on. It should be mentioned that although the contracts of the several conferences are not precisely alike, they represent definite obligations on the part of the carriers collectively to furnish space and maintain certain levels of rates, thus providing substantial advantages in addition to and apart from the rate discount so commonly referred to.

5. Without the benefit of the collective assurance of continued patronage afforded by the contracts there is a strong temptation perhaps especially on the part of carriers operating on low cost basis to fill empty space on their ships at a lower rate and thus increase their net revenue. This temptation is particularly strong in periods of short cargoes and cheap charters such as the present. Any such program can only lead to rate wars with attendant chaos and disaster.

6. The impact of the almost inevitable tendency to slash rates must be felt more strongly by the high cost carriers (primarily the Americans) to their immediate disadvantage and the indirect disadvantage of all those industries and workers dependent on shipping, likewise to the disadvantage of the American Government as a principal support of American shipping.

7. The present bill aims only to maintain the status quo and that always under the ever watchful eye of the Federal Maritime Board while opportunity is given to fully consider the broad aspects of permanent legislation.

8. The assertion of lack of urgency on the basis of limited use of contract rates—said to be less than one half of 130 conferences—is most misleading in that the 130 conferences include those where contract rates could be considered as inappropriate, unnecessary, or in some instances unlawful. Actually, the contract rate system is used as a necessary support to the conference system in the great majority of instances where it could properly be available and in other instances its adoption has merely been held up pending the outcome of the litigation.

9. The system has been broadly in use for many, many years. It has been considered as permitted by the Shipping Act, 1916 for more than 40 years. It has the wide and vigorous support of carriers and merchants of all nationalities. It should not be lightly abandoned. On the contrary, the important and almost vested interests of both carriers and shippers should be protected while full and detailed consideration can be given to the national and international economic and policy factors involved.

For the foregoing reasons we strongly recommend the immediate enactment of H. R. 12751.

Mr. BAKER (Jasper Baker, United Fruit Co.). Jasper Baker, I am the Washington representative of the United Fruit Co. I would like to announce that we are strongly in favor of this bill and we ask

the privilege of placing before you a brief at the earliest possible moment, Monday or Tuesday.

The CHAIRMAN. That will be received.

(The statement of Ralph Keating follows:)

STATEMENT OF RALPH KEATING, GENERAL MANAGER, FREIGHT AND PASSENGER DEPARTMENTS ON BEHALF OF UNITED FRUIT CO., INC. IN SUPPORT OF H. R. 12751

My name is Ralph Keating. I am general manager, freight and passenger departments of the United Fruit Co.

I have been in the employ of the United Fruit Co. since 1919 and have been actively engaged in ocean transportation for approximately 40 years.

During the period 1941 to 1945, under war conditions, I was Director of Allocations for the Maritime Commission and Deputy Administrator in Charge of Ship Allocations for the War Shipping Administration.

The United Fruit Co. strongly supports H. R. 12751 as a measure which provides timely relief in the avoidance or postponement of the economic disruption faced by shippers and carriers in the proposed outlawing of the dual-rate system.

The United Fruit Co. has provided steamship service between the United States and the Caribbean area, i. e., Central American countries, the islands in the Caribbean, the north coast of Colombia and the Panama Canal Zone for a period of 59 years. The company owns and operates 23 American vessels, 21 Honduran vessels and 3 Dutch vessels. In addition to the owned fleet approximately 12 vessels are annually chartered from other owners for operation in the Caribbean freight services. Regular services are maintained under conference agreements. All the freight conferences to which the company belongs use the dual-rate system. The company is unsubsidized.

Our services are as follows:

Between United States Atlantic and gulf ports and Cuba, Jamaica, Bahamas, Colombia, British Honduras, east coast ports of Costa Rica, Honduras, Guatemala and Panama. We also serve the west coast of Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Guatemala, and the Panama Canal Zone.

We are faced with competition by nonconference operators and conference operators in the trades covered by conference agreements. Currently the carriers who compete with us as nonconference operators where conferences are established are: Ayo Bros., Buccaneer Line, Carl Matusek Shipping Co., Dalphi Line, Delfa Line, Golfo Cuba Line, Intercontinental Shipping Co., Navis Line, Palmer Line, Southern Shipping Co., Surinam Navigation Co., Trade Winds Line, Veramar Line, and West Indies Line.

Our conference competition consists of the following:

Cuba: Cubamar Line, Garcia Line, Lykes Line, Orlanda Line, Standard Fruit (Vaccaro Line), Vacuba Line, Ward Line, West India Fruit & SS Line, and West Line.

Jamaica: Alcoa S.S. Co., and Grace Line, Inc.

Colombia, east coast: Coldemar Line, Grace Line, Inc., Lykes Line, and Transportadora Gran Colombiana.

Panama Canal Zone: Coldemar Line, Grace Line, Inc., Mamenic Line, Panama Line, and West Coast Line.

West coast, Central America: Grace Line, Inc., Lykes Line, Mamenic Line, and Panama Line.

There is no evidence in the history of service between United States and Caribbean area ports to support a contention that the dual-rate system has restricted or eliminated competition. To the contrary, it is clear that competition both within and without the freight conferences has been extensive and that heavy overtonnage may be found in many areas of the Caribbean.

The steamship industry faces the abolishment of the dual-rate system coincidental with a widespread depression in world trade and at a time when the rate cutter, the "hit-and-run" operator, and the opportunist may readily acquire cheap tonnage. These are the bases for inevitable disruption of rate structures and the creation of practices which are harmful to carriers and shippers. Here is the invitation to the nonconference operator to begin wholesale raiding of trades served by established carriers operating under stabilized rate structures. The methods are well known. They consist in the bidding for large or choice lots of cargo at reduced rates, leaving the remainder for movement by established carriers whose long-term obligations are to provide for the exporter a regular and dependable steamship service. The nonconference operator has no intention to furnish regular service or to join a freight conference. His practice is to

move from one trade to another as opportunity presents itself to take volume lots of cargo from established carriers. This practice was not eliminated by the dual-rate system, but was held in reasonable restraint through the unwillingness of shippers to jeopardized contract arrangements which assured them of service and rate stability. The elimination of the dual-rate system removes any such restraint and, in actuality, requires shippers to protect themselves against losses of market by seeking space in the vessels of the cut-rate operator. The chaos which has been predicted by many witnesses before this committee is a natural result of the inevitable attempt by both shippers and established carriers to protect their own interests in the face of unstabilized rates.

The dual-rate system has been before the courts for a number of years upon the instance of one steamship operator. It has not been presented to Congress for study and consideration in the light of its essentiality in the preservation of freight conferences which came into being by act of Congress in 1916 and which have justified their existence as beneficial to the American exporter and to the American merchant marine. Passage by Congress of H. R. 12751 will harm no one and will provide opportunity for congressional exploration of the dual-rate system and its relation to the progress and well being of our merchant marine. Additionally, its passage will assure essential interim relief in the operation of a vital industry which otherwise faces the burden of surviving an overnight abolishment of the foundation upon which the freight conference rests.

Mr. MAGNER (James E. Magner, executive vice president, Grace Line, Inc., New York). My name is James E. Magner, executive vice president of the Grace Line.

We are here expressly to support the legislation before this committee. It is timely and it is needed. We would like to have the privilege of submitting a statement later.

The CHAIRMAN. That will be permitted.

(The statement of James E. Magner follows:)

STATEMENT OF JAMES E. MAGNER, EXECUTIVE VICE PRESIDENT, ON BEHALF OF
GRACE LINE, INC., IN SUPPORT OF H. R. 12751

My name is James E. Magner, I am executive vice president of Grace Line, Inc.

Grace Line strongly supports H. R. 12751 as timely and necessary, particularly now, because of the depressed traffic conditions in foreign trade which exist generally in all trade areas under today's international conditions. Any break in rate structures at this time on the routes served by Grace Line would be especially serious for our company.

I have been in the employ of Grace for over 40 years, always actively engaged in foreign freight traffic and working in the handling and developing of traffic between the United States and the areas in Latin America served by Grace Line. I have participated in ratemaking as an individual line and as a conference member for many years and am personally familiar with conference procedures and practices generally. This ratemaking system is used throughout the world.

Grace Line, Inc., is an American-owned steamship company, operating exclusively United States-flag ships, consisting of 2 large passenger-cargo vessels, 9 combination cargo-passenger vessels, and 22 dry cargo vessels.

Regular services are maintained, under an operating-differential subsidy agreement with the United States Government, on the following trade routes declared to be essential by the Federal Maritime Board:

Trade route 4: Between United States Atlantic ports and ports in the Netherlands Antilles, north coast of Venezuela, and Colombia; and ports in the Caribbean.

Trade route 2: Between United States Atlantic ports and ports in the Panama Canal Zone and ports on the west coasts of Colombia, Ecuador, Peru, and Chile.

Trade route 25: Between United States Pacific ports and ports on the west coasts of Mexico-Central America, Panama, and the west coast of South America.

Grace Line, since the establishment of a conference, or since the start of its service in certain areas, has been and is a member of the conferences in the trade it serves, and the majority of such conferences use the dual-rate system. We are a strong believer in the conference dual-rate system as a means of preserving rate equality to all shippers and stability in rate structures in international commerce.

The dual rate or contract rate system has greatly contributed to the stability of rates in these trades and has had the support of the vast majority of shippers, large and small, who are benefited by regularity of sailings, good, efficient handling, and services at fair and equitable, stable rates. There seems to be an impression that there are two distinct groups of shippers, i. e., those who have signed contracts with the conference under a dual rate system—contract shippers; and a separate group, who have elected not to sign contracts—noncontract shippers. This is not so. There is but one group of shippers as practically all shippers, large and small, have signed contracts with the conferences in the trade areas we serve.

For example:

In the trade from the United States Atlantic to Venezuela, the conference has 7,380 contract signers; in the trade from the United States Atlantic to the east coast of Colombia, the conference has 6,844 contract signers; in the trade from the United States Atlantic to the west coast of South America, the conference has 7,276 contract signers.

The nonconference operator secures his cargo by undercutting the conference rate, thereby either inducing the shipper to avoid or sidestep his contract obligations by shipping under another name or some such device; or inducing the consignee to instruct the shipper to avoid his contract obligations in a similar manner. The conference lines and a nonconference operator compete for the same cargo from the same group of shippers.

Active competition does exist in all these trades. We experience rate cutting from time to time by sporadic operators, but such raiding by hit-and-run opportunists would be completely uncontrolled without the contract rate system.

On trade route 4, Grace Line competes with 9 foreign-flag conference services and 6 foreign-flag nonconference services, and occasional foreign-flag tramp vessels.

On trade route 2, Grace Line competes with 2 United States-flag conference services (Panama Canal Zone only), 4 foreign-flag conference services, and 2 United States-flag nonconference services (Panama Canal Zone only), and occasional foreign-flag nonconference tramp ships.

On trade route 25, Grace Line competes with 1 United States-flag conference service (Panama Canal Zone only) and 11 foreign-flag conference services and frequent foreign-flag tramp vessels.

The contract-rate system does not prevent competition, as some would have you believe. There are more competing lines in the trades where the system is in effect than in trades where it is not used. The system's only effect on competition is to prevent the discriminatory practice followed by a few operators who elect to remain outside the conferences in order to bid for attractive lots of cargo by underquoting conference rates. Unless stopped, such practices destroy equality of rates to all shippers, large and small, and stability. It is not possible to have both equality of rates and rate cutting side by side.

We share the belief of the many liner service operators that the present doubts or uncertainty as to the legality of the conference dual-rate system can only lead to disruption of existing contracts with shippers with an inevitable breakdown in stability of rate structures, regularity of sailings, and services. With the depressed tonnage and traffic conditions as they generally exist today, this can quickly lead into destructive rate wars not beneficial to the foreign commerce of the United States, disastrous to the carriers, and not of benefit to, or desired by, the vast majority of shippers.

As of now, five of our dry cargo vessels cannot be economically employed in their accustomed service because of scarcity of cargo. Two are on outside term charters, which shortly expire. Three are laid up. One additional freighter will be laid up at the expiration of its present voyage. This lack of cargo is not peculiar to the trades we serve, but exists worldwide and can be proven by the increasing number of ships, both United States-flag and foreign-flag, which have been and are being laid up. This situation is serious today to all concerned in foreign trade, the exporters, the importers, the carriers, the workers ashore and afloat, and the Government as well. It should not be permitted to worsen because of inaction of any nature. Continued uncertainty as to the legality of the contract-rate system could be the spark, under today's traffic conditions, which could ignite the catastrophe of widespread rate collapse.

In the situation of a prolonged rate fight, it is clearly evident that the carrier will suffer severe, unrecoverable loss of revenues. Even Isbrandtsen has admitted to this committee that the losses incurred in the rate war in the trade from Japan to the United States have practically driven Isbrandtsen out of

the trade. It is equally true that United States exporters and United States importers gain nothing as, unavoidably, because of competitive reasons, the reduction in freight costs accrues to the foreign buyer and seller. United States labor also is adversely affected. As sailings and services are curtailed, ship are laid up—less jobs are available—workers are laid off afloat and ashore—less supplies are consumed. So the snowball grows. The Government is doubly affected. Not only does it lose recapture funds from subsidized carriers, but it also loses taxes from all American companies, both subsidized and nonsubsidized. Workers in all allied industries are affected, such as repair yards, shipbuilding, chandlers, towboat companies, truckers, longshore workers, etc. The Government is also affected by any reduction in the wages of these workers by loss of income tax and by increase of unemployment rolls.

It is not mere speculation to predict rate wars when the contract rate system is prevented. The trades from Japan have been denied the contract-rate system since World War II. They have been in unrestricted rate competition and have experienced a bitter rate war among the lines. In my experience, I have seen similar and perhaps worse rate wars in other trades where nonconference rate cutting has not been controlled. The effects continue many years after the rate war terminates.

We urge that this proposed H. R. 12751 be enacted as promptly as possible so as to provide the reasonable status quo period of time, so that Congress may study the entire subject fully and carefully, during which period the Nation's foreign commerce may continue to be handled under conditions and regulations as it has for the past many years.

I do not want to conclude this statement without presenting to the committee my own view of the potential consequences to Grace Line in the event the contract-rate system is canceled in our trades and rate wars follow.

When rates are opened to meet nonconference rate cutting, there is no bottom to the rates since no government can fix minimum rates in international commerce. I am informed that rates dropped as much as 80 percent in the Japan homeward trade after rates were opened in the spring of 1953. Such a drop is not uncommon. In our case a drop in our overall rate structure of as little as 15 percent would have wiped out all our profits in 1956 and 1957, eliminating entirely all recapture and Federal taxes.

It is wrong to represent to you that our subsidy aid places us on equal competitive terms with our foreign competitors. The subsidy applies on a limited number of operating costs. Many foreign companies pay less overhead, for example. Some pay taxes but some less than ours or none at all. Few or none are required to replace their vessels as rapidly as we. Many depreciate their vessels in a few years but operate them many years beyond our own useful life period.

We have undertaken a tremendously ambitious replacement program. We did so optimistically, believing that we could meet our commitments if we could anticipate reasonable future profits. That cannot be done if our freight rates, which are the source of any carrier's revenue, are drastically cut by rate wars. It is to avoid such unnecessary and grave consequences that we seek to avoid open rate conditions.

I believe that passage of H. R. 12751 will serve that purpose and provide the necessary time in which to crystallize the best thinking and then prepare soundly conceived realistic legislation.

Mr. SACKETT (David H. Sackett, general secretary, Calcutta-United States of America Conference). On behalf of the conference, I am here to support the bill and with your permission will file a statement.

The CHAIRMAN. That will be permitted.

(The statement of David H. Sackett follows:)

STATEMENT OF DAVID H. SACKETT, GENERAL SECRETARY CALCUTTA-UNITED STATES OF AMERICA CONFERENCE IN SUPPORT OF H. R. 12751

This conference is an association of eight steamship companies organized pursuant to an agreement which has been approved by the Federal Maritime Board and its predecessors (agreement No. 6500).

Its member lines as indicated below engage in the homeward trade from the port of Calcutta, India, to ports on the United States Atlantic coast in the range from Portland, Maine, to Hampton Roads, Va.:

American Export Lines, Inc.; Central Gulf Steamship Corp.; Ellerman & Bucknall Associated Lines; Hellenic Lines, Ltd.; Isthmian Lines, Inc.; The Bank Line, Ltd.; The Scindia Steam Navigation Co., Ltd.; and Thos. & Jno. Brocklebank, Ltd.

In the year 1946, our present contract system with exporters and importers was instituted. This contract system has proved eminently satisfactory to both our contractors and our member lines. Many of our contractors have already advised this committee of their support of H. R. 12751.

The decision of the United States Supreme Court on May 19, 1958 in *Federal Maritime Board v. Isbrandtsen Company, Inc., et al.* has engendered great uncertainty and confusion and threatens to create unstable freight rates in the trade unless H. R. 12751 is enacted into law.

While conference counsel advises us that the Supreme Court decision can be distinguished as not being applicable to our dual-rate contract system, nevertheless, the Supreme Court decision leaves the issue of whether a particular contract system was intended or has the effect of stifling competition for the Federal Maritime Board to determine.

The Federal Maritime Board has never made any such determination in connection with our system.

In addition, we are faced with the dissenting opinion of Mr. Justice Frankfurter construing the majority opinion as outlawing all dual rate systems.

It is reiterated that great uncertainty has been created and our contractors inquire of us whether the Supreme Court's decision nullifies our contracts with them. Such doubts can only be resolved by further litigation.

Without the use of a dual rate system, the conference cannot continue to provide its shippers with stable, fair and reasonable rates or continue to make the necessary investment in ships, port facilities, etc., require to provide regular and dependable service in the trade.

The member lines of this conference wholeheartedly endorse and strongly urge the enactment of H. R. 12751 as it is our seriously considered opinion that such interim legislation is vitally important and absolutely essential, affording further opportunity to study this problem and its solution by enactment of permanent legislation.

Thank you, Mr. Chairman, for permitting the filing of this statement.

Mr. PHILLIPS (John M. Phillips, the India, Pakistan, Ceylon and Burma Outward Freight Conference). John M. Phillips; I am general executive secretary of the India, Pakistan, Ceylon and Burma Outward Freight Conference. The member lines of that conference wholeheartedly support the bill, and I ask the privilege of making a statement.

The CHAIRMAN. It will be permitted.

(The statement of John M. Phillips follows:)

STATEMENT OF JOHN M. PHILLIPS ON BEHALF OF THE INDIA, PAKISTAN, CEYLON AND BURMA OUTWARD FREIGHT CONFERENCE

Mr. Chairman and members of the committee, I was present during the hearings and available to testify in support of H. R. 12751 as general executive secretary of the India, Pakistan, Ceylon and Burma Outward Freight Conference. It developed that there was insufficient time for all witnesses in support of the measure to be heard and accordingly permission was granted allowing the conference to file a statement with this committee in support of the proposed legislation.

The India, Pakistan, Ceylon and Burma Outward Freight Conference is an association of 8 steamship lines operating in the foreign commerce of the United States under the terms of a basic agreement (agreement No. 7690) which has been approved by the predecessor agency of the Federal Maritime Board pursuant to the provisions of section 15 of the Shipping Act, 1916 (46 U. S. C. A. sec. 814). This conference covers the trade from United States Atlantic and Gulf of Mexico ports to ports in India, Pakistan, Ceylon, and Burma. The following common carriers are members of this conference: American Export Lines, Inc., Ellerman & Bucknall Associated Lines, Hellenic Lines, Ltd., Hoegh Lines Joint Service, Isthmian Lines, Inc., Nedlloyd Line, The Bank Line, Ltd., and American President Lines, Ltd.

Since June 1947 this conference has had in effect a contract dual-rate system and as of the date of this statement has approximately 6,500 contracts with its shippers. Immediately following the decision of the United States Supreme Court rendered on May 19, 1958, in *Federal Maritime Board v. Isbrandtsen Co. Inc. et al.*, numerous inquiries were received, particularly from small shippers, as to what impact the Supreme Court decision might have upon the validity of the contracts which the shippers have with the lines members of this conference. Other shippers, who had not previously signed such contracts, inquired whether they should sign such contracts in view of the Supreme Court decision. Some substantial shippers have questioned whether they are still obligated by their contracts under the circumstances.

We are advised by conference counsel that the Supreme Court decision has not made illegal the contracts which we have with our shippers inasmuch as our contract system was not instituted to stifle or curtail nonconference competition and, as a matter of fact, it has never had this effect. While we believe our contracts continue to be valid, inquiries from some of our shippers indicate that they do not concur in our position. Thus, as a result of the Supreme Court decision the continued stability of relations between shippers and the member lines of this conference has been threatened. Unless the legislation proposed in H. R. 12751 is passed, many years of litigation may ensue before the uncertainties created by the Supreme Court decision are resolved.

It is the position of the member lines of this conference that to prevent rate instability, which would be detrimental to the foreign commerce of the United States and to carriers and shippers alike, this legislation should be passed for an interim period while permanent legislation is being considered by Congress.

The lines members of this conference heartily endorse H. R. 12751 and urge its early enactment.

Mr. FOLEY (George F. Foley, chairman, River Plate and Brazil Conferences, 17 Battery Place, New York City). George Foley, chairman of the River Plate and Brazil Conferences, and also five inbound conferences from South America to the east coast of the United States.

Our member lines heartily support this bill and would like the privilege of submitting a statement.

The CHAIRMAN. That will be permitted.

(The statement of George F. Foley follows:)

STATEMENT OF GEORGE F. FOLEY, CHAIRMAN, RIVER PLATE AND BRAZIL CONFERENCES, EAST COAST SOUTH AMERICA REEFER CONFERENCE, BRAZIL/UNITED STATES-CANADA FREIGHT CONFERENCE, MID BRAZIL/UNITED STATES-CANADA FREIGHT CONFERENCE, NORTH BRAZIL/UNITED STATES-CANADA FREIGHT CONFERENCE, RIVER PLATE/UNITED STATES-CANADA FREIGHT CONFERENCE, NEW YORK, N. Y., IN SUPPORT OF H. R. 12751; H. R. 12758; AND H. R. 12748

Mr. Chairman and members of the committee, in accordance with the permission granted to me at the hearing of this committee on Friday, June 6, 1958, I wish to file this statement in support of H. R. 12751, H. R. 12758 and H. R. 12748 on behalf of the following conferences of which I am chairman: River Plate and Brazil Conferences, East Coast South America Reefer Conference, Brazil/United States-Canada Freight Conference, Mid Brazil/United States-Canada Freight Conference, North Brazil/United States-Canada Freight Conference, River Plate/United States-Canada Freight Conference.

These conferences cover both the export and import trade between United States Atlantic and gulf ports and ports in Brazil, Argentina, Uruguay, and Paraguay.

I have been chairman of the River Plate and Brazil Conferences since 1930 and chairman of the other conferences since their formation at later dates. Prior to 1930, I was employed by the United States Shipping Board from 1919 through 1930; first in the Operating Department until 1924, and from 1924 to 1930 as head of the Long Voyage and South American Trade Division of the Traffic Department, supervising traffic activities of Shipping Board vessels operating in the long voyage and South American trades.

These conferences currently have in effect with shippers and consignees approximately 8,000 contracts.

Following the decision of the Supreme Court in *Federal Maritime Board v. Isbrandtsen Co., Inc., et al.*, we received numerous inquiries from our contract shippers raising the question of their status under our conference contracts with them. The stable relations between the member lines of the conferences and their shippers which have existed for many years, are seriously threatened as a result of the uncertainty created by the Supreme Court decision. The question has been raised as to the continued legality of the reduction in rates given to contract shippers, and whether carriers are under an obligation to collect from contract shippers the difference between the regular tariff rates and the contract rates.

In addition we are faced with the conflicting interpretations which may be placed upon the Supreme Court decision. For example, if we examine the decision written by Judge Brennan, the Court condemned the dual-rate system of the Japan/Atlantic Conference because it was intended to stifle competition from a nonconference carrier and was, therefore, considered to be a predatory device. At another place in the opinion, the Court said that the dual rate system of that conference would "curtail" competition. The court also said the system would "offset" or was designed to "meet" competition. The words "stifle," "curtail," "offset," and "meet" all have different meanings, yet the Supreme Court decision uses all these words in describing the effect of the contract rate system of the Japan/Atlantic Conference.

Furthermore, the Court said, "since, as we hold section 14, Third, strikes down dual-rate systems only where they are employed as predator devices, then precise findings by the Board as to a particular system's intent and effect would become essential to a judicial determination of the system's validity under the statute." The state of doubt cast over the contract system of various conferences was reflected in the testimony of Mr. Ben Quill when he testified before this committee, for as he stated, "the decision casts grave doubt on the legality of most of the dual-rate systems presently employed by steamship conferences."

In addition we are faced with further uncertainty by the language of Mr. Justice Frankfurter, in his dissenting opinion, in which he construes the majority opinion as outlawing all dual-rate systems.

The principal reason for the use of contract/noncontract rates in this trade is to assure the continuance of the conference; the frequency, dependability, and stability of service; and the uniformity and stability of freight rates. The members recognize that if they are to continue providing the character of service which the shippers need and want, the carriers' regular services must be supported by a regular flow of cargo from those shippers; and something more than mere cooperation is essential. Hence, lower contract rates are made available to those shippers who express their willingness to cooperate in a binding contract to ship all of their exports on conference lines.

Informal discussions with shippers' representatives have disclosed that most responsible shippers are willing to pay uniform and stable Conference rates in order to support stability and frequency of service, which has more commercial value to them over a period of time than the ability occasionally to avail themselves of somewhat lower rates offered by nonconference carriers. And the carriers, by obtaining such contracts from shippers, are better able to estimate the approximate volume of traffic that is to be expected, how much of their total tonnage to assign to the trade, and to arrange their sailing schedule accordingly.

Experience has shown, moreover, that the contract/noncontract system has been mutually beneficial to carriers and shippers. The members have been provided with a regular source of cargo at compensatory rates, which in turn has permitted the members to provide all shippers, both contract and noncontract, with frequent, regular scheduled sailings at uniform rates which, for all practical purposes, are available for an advance booking period—a service of utmost importance to those American exporters who quote their products to foreign customers on a c. i. f. basis.

On the other hand, the members have no reason to believe that their contract/noncontract rates result in any necessary hardship to either noncontract shippers or nonconference carriers. Shippers' contracts and the benefits thereof, including the lower contract rates, are offered without discrimination to any shipper or prospective shipper who is willing to sign such a contract with the members of the conference and any nonconference carrier who desires to join with the other members of the conference and participate in the cargo offered by contract shippers may do so, merely by applying for membership in the conference and agreeing to abide by its rules, regulations and tariffs. Therefore,

any handicap of a noncontract shipper or a nonconference carrier is a handicap voluntarily assumed, not the result of discrimination by the members of the conference.

I would like to divert for a moment and refer to the testimony of Mr. O'Connor before this committee wherein he made the charge that the dual-rate system amounts to common carriers charging two different rates for identical transportation services on the same ship. This contention has been part of his stock argument in the various dual-rate cases, which have been considered by the Federal Maritime Board and courts. To date neither the Board nor any court has given any credence to this argument. What Mr. O'Connor chooses to overlook is the fact that a contract shipper is not on a parity with a noncontract shipper. A contract shipper limits his freedom of action in return for a rate reduction. Mr. O'Connor's argument is really an argument that the contract system is "unjustly discriminatory" under sections 15, 16, and 17 of the Shipping Act. Under these sections not all discriminations are prohibited by the Shipping Act, but only those which are "unjustly" so. Clearly the charging of a lower rate to a shipper in view of the fact that he has signed a contract with the carriers confining his shipments exclusively to the conference lines is not "unjustly discriminatory" and has been so found by the Federal Maritime Board.

In their testimony in opposition to this bill, Mr. O'Connor and Mr. Crinkley have approved of the conference system, and in fact urged it being maintained stating they see no reason for conferences to break up and open rate war situations to develop. They definitely encourage the continuance of conferences without the dual-rate system. Their reason for this is rather obvious in view of the fact established by testimony that they customarily quote 10 percent below the conference rates. The situation they urge would, of course, leave them in a preferential position with conferences holding an umbrella over their heads and leaving the member lines of the conferences in a position akin to a flock of poultry without a protecting fence subject to the attack of any predatory fox. Conference ratemaking also relieves them of the responsibility of complicated studies to establish rates, since their activity in establishing rates appears to be confined to merely quoting 10 percent under the rates established by conferences in the trades where they operate whereas complete and detailed studies in connection with each commodity are made by conferences at considerable expense.

Accordingly, we strongly urge the adoption of this legislation.

Mr. GALLOWAY. William C. Galloway, chairman of the Pacific Westbound Conference. I am here at the unanimous direction of our member lines to support the bill before you.

I ask your leave to file a short statement later.

The CHAIRMAN. That will be permitted.

(The statement of William C. Galloway follows:)

STATEMENT OF WILLIAM C. GALLOWAY, CHAIRMAN, PACIFIC WESTBOUND CONFERENCE, SAN FRANCISCO, CALIF., IN SUPPORT OF H. R. 12751

My name is William C. Galloway. I am chairman of Pacific Westbound Conference, a steamship conference whose agreement has been approved by the Maritime Board, with offices at San Francisco, Calif. I am authorized to and am making this statement on behalf of the steamship lines constituting the membership of Pacific Westbound Conference in support of H. R. 12751 and other identical bills.

The membership of this conference consists of 18 American lines and foreign lines engaged in the trade from Pacific ports of the United States and Canada to the Orient. Our present member lines are the following:

American:

- American Mail Line, Ltd.
- American President Lines, Ltd.
- Isthmian Lines, Inc.
- Pacific Far East Line, Inc.
- States Marine Corp.
- States Steamship Co.
- Waterman Steamship Corp.

Foreign :

Daido Line
 De La Rama Lines
 Java Pacific & Hoegh Lines
 Klavencss Line
 Knutsen Line
 Nippon Yusen Kaisha
 Nissan Kisen Kaisha, Ltd.
 Nitto Shosen Co., Ltd.
 Osaka Shosen Kaihsa
 Pacific Orient Express Line
 Yamashita Kisen Kaisha

The members have voted unanimously in support of this legislation. This conference was formed in 1923 and has used contract rates during the entire period of its existenc. Among the principal commodities shipped on conference lines are flour, lumber, woodpulp, paper, cotton, canned goods, machinery, chemicals, tallow, and other general cargo.

The conference has approximately 4,100 outstanding contracts with Pacific coast shippers.

During the year 1957 the number of sailings of vessels of member lines in the Pacific westbound trade totaled 1,055 or approximately 88 per month.

As these hearings are limited to interim legislation only and in order to avoid repetition of testimony already introduced, we are restricting this statement to 1 or 2 points.

The effect of the recent decision of the United States Supreme Court, *Isbrandtsen v. United States*, has been very disturbing and confusing to the shippers with whom our members deal. It is imperative that the merchants engaged in foreign trade have stable fixed rates in order to consummate sales in the overseas markets. Only strong steamship conferences can provide and assure rate stability. A strong conference is impossible without the contract rate system.

The question was asked during these hearings as to whether a small shipper would get the advantages of the lower contract rates. We can say positively that he would. It is the practice of our member lines to see that new or occasional shippers know of the two rates, and it is ascertained if they desire to sign a contract. The carriers would in no instance apply the higher non-contract rate to a shipment without first explaining to the shipper concerned the two levels of rates and the general obligations of the contract rate agreement.

One of the witnesses, John A. O'Connor, representing Isbrandtsen Line, an opponent of H. R. 12751, makes the assertion that there is no need for a dual-rate system in many trades as there is no competition. He said :

"There is none of them (carriers) operating out of the west coast that has any independent competition." (Steno transcript of hearings June 3, p. 82.)

This statement is incorrect. There is one independent foreign-flag line in our trade (Pacific westbound). There is other more frequent competition in fishing vessels and tankers which load general cargo on their return trip to the Orient. There are also the tramps who fill out their bulk cargo loadings with general cargo at Pacific coast ports. These vessels are on the berth frequently, endeavoring with reduced rates to supplement their bulk carryings with liner cargoes.

We respectfully urge this honorable committee to approve H. R. 12751 so that reasonable stability in foreign freight rates can be maintained during the period while permanent legislation is under consideration by the Congress.

Mr. Nash (J. F. Nash, Chairman, Atlantic-Gulf-Indonesia Conference and Atlantic, Gulf and Finland Conference).

Mr. NASH. J. F. Nash, chairman of the Atlantic Gulf Indonesia Conference and the Atlantic, Gulf, and Finland Conference. We would like the privilege of filing a brief the early part of next week.

The CHAIRMAN. That will be permitted.

(The statement of James F. Nash follows:)

STATEMENT OF JAMES F. NASH ON BEHALF OF THE UNITED STATES ATLANTIC AND GULF-INDONESIA CONFERENCE AND THE UNITED STATES ATLANTIC AND GULF-SINGAPORE, MALAYA AND THAILAND CONFERENCE IN SUPPORT OF H. R. 12751

Gentlemen, this statement in support of H. R. 12751 is made on behalf of the Atlantic and Gulf-Indonesia Conference, an association of seven steamship lines engaged in the trade from United States Atlantic and Gulf of Mexico ports to ports in Indonesia, operating under a basic agreement (agreement No. 8080) approved by the Federal Maritime Board under section 15 of the Shipping Act, 1916. In addition the Atlantic and Gulf-Singapore, Malaya and Thailand Conference, composed of 11 lines, engaged in the foreign commerce of the United States from United States Atlantic and Gulf of Mexico ports to Singapore and ports in Malaya and Thailand, pursuant to a basic agreement approved by the Board (agreement No. 8240), also strongly urge the adoption of this bill.

The membership of these conferences are as follows:

Atlantic and Gulf-Indonesia Conference: American President Lines, Ltd., Fern-Ville Far East Lines, Isthmian Lines, Inc., Java New York Line, Lykes Bros. Steamship Co., Inc., A. P. Moller-Maersk Line, and Wilh. Wilhelmsens.

Atlantic and Gulf-Singapore, Malaya and Thailand Conference: American President Lines, Ltd., Blue Funnel Line-Java New York Line, Compagnie de Transports Océaniques, Ellerman & Bucknall Associated Lines, Fern-Ville Far East Lines, Isthmian Lines, Inc., Lykes Bros. Steamship Co., Inc., Mitsui Steamship Co., Ltd., A. P. Moller-Maersk Line, Prince Line, Ltd., and Wilh. Wilhelmsens.

I am the chairman of these two conferences.

If we examine the decision of Justice Brennan in *Federal Maritime Board v. Isbrandtsen Co., Inc., et al.*, the Court condemned the dual-rate system of the Japan-Atlantic Conference because it was intended to "stifle" the competition of a nonconference carrier. At other places in the opinion the Court said the dual-rate system of that conference would "curtail" competition. The Court also said the system would "offset" or "meet" competition. The words "stifle," "curtail," "offset" and "meet" all have different meanings. Further the Court said, "since, as we hold section 14, third, strikes down dual-rate systems only where they are employed as predatory devices, then precise findings by the Board as to a particular system's intent and effect would become essential to a judicial determination of the system's validity under the statute." The state of doubt cast over the contract systems of various conferences was reflected in the testimony of Mr. Ben Guill when he testified before this committee, for, as he stated, "the decision casts grave doubts on the legality of most of the dual-rate systems presently employed by steamship conferences."

In addition, there is the further uncertainty created by the view of Justice Frankfurter in his dissenting opinion that the majority opinion outlaws all dual-rate systems.

These conferences have in effect with their shippers approximately 5,000 contracts. Following the Court's decision, many of our shippers questioned the legal status of our contracts. The only way these uncertainties can be resolved short of lengthy litigation before the Board and in the courts is by the passage of the proposed legislation.

We strongly urge the adoption of H. R. 12751 during this session of the Congress.

The CHAIRMAN. The Chair has just received from San Francisco the following telegram:

In the interest of maintaining stability in American maritime industry the International Longshoremen's and Warehousemen's Union urges favorable action on H. R. 12751.

(Signed) LOUIS GOLDBLATT, *Secretary-Treasurer*.

There are other telegrams and letters here that will be placed with this one in the record.

(The telegrams and letters referred to follow:)

SAN FRANCISCO, CALIF., June 6, 1958.

Chairman HERBERT C. BONNER,
House Merchant Marine Committee,
House Office Building, Washington, D. C.:

In the interest of maintaining stability in American maritime industry the International Longshoremen's and Warehousemen's Union urges favorable action on H. R. 12751.

LOUIS GOLDBLATT,
Secretary-Treasurer.

NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.,
New York, N. Y., June 6, 1958.

HON. HERBERT C. BONNER,
Chairman, House Merchant Marine and Fisheries Committee, House of
Representatives, Washington, D. C.

DEAR MR. BONNER: We are pleased to confirm our telegram to you of June 3, reading as follows: "We wish to register our support of your proposed legislation to amend section 14 of the Shipping Act of 1916 to permit dual rate arrangements of steamship conferences to be continued for a period of 2 years. Our organization has always supported the conference system on the grounds that this is the only practical method of maintaining stability in ocean freight rates and the best way to protect small importers against discrimination.

We feel that if the conference system is permitted to lapse as a result of the recent Supreme Court decision, it can only result in chaotic conditions in the ocean freight market. While this could possibly be of benefit to large shippers, who would be able to make advantageous arrangements with the carriers, it would definitely discriminate against the small shipper, who does not have the volume to permit him to bargain successfully with the steamship companies. Under the conference system, all shippers, both large and small, are on an equal basis and the possibilities of discrimination against the small shipper are reduced to a minimum.

For the above reasons, we are wholeheartedly behind your efforts to secure stopgap legislation, which will sanction the present dual rate system until such time as permanent legislation may be enacted.

Sincerely yours,

HARRY S. RADCLIFFE,
Executive Vice President.

E. I. DU PONT DE NEMOURS & Co., INC.,
TRAFFIC DEPARTMENT,
Wilmington, Delaware, June 9, 1958.

HON. HERBERT C. BONNER,
Chairman, House Merchant Marine and Fisheries Committee, House of
Representatives, Washington, D. C.

MY DEAR MR. BONNER: Because of your known interest in considering the effects of the recent Supreme Court decision in the Isbrandtsen case, I am taking the liberty of expressing to you and to Senator Warren G. Magnuson, chairman of the Committee on Interstate and Foreign Commerce, our views as a shipper on the subject of conferences and conference rates.

We are in favor of steamship conferences and conference rates, including the dual-rate system which we believe strengthens the conferences. It has been our experience that they protect both the American shippers and the American shipowners and at the same time serve the public interest by helping to maintain an American merchant marine. We are, therefore, concerned that the decision in the Isbrandtsen case may result in their elimination.

We respectfully urge that Congress give earnest consideration to this problem and take such action as will permit the conferences to continue to function on a basis that will provide shippers with regular service and stable rates.

Very truly yours,

ROBT. W. MARSHALL, *Director.*

HERMAN GOLDMAN,
ATTORNEY AND COUNSELOR AT LAW,
New York, N. Y., June 16, 1958.

Re H. R. 12751.

COMMITTEE ON MERCHANT MARINE AND FISHERIES,
House Office Building, Washington, D. C.

ESTEEMED SIR: Pursuant to leave graciously granted to me by your telegram of June 13, I write this letter to you as counsel to the Far East Conference and the New York Committee of Inward Far East Lines with the same force and effect as if its contents had been made the subject of oral testimony by me before your committee in the course of the hearings on the above bill.

I write specifically with reference to a letter to Hon. Herbert Bonner written by Mr. Matthew S. Crinkley and referred to in a news item in the New York Journal of Commerce, issue of June 13, 1958. From this news item I would gather that it is Mr. Crinkley's view that section 19 of the Merchant Marine Act, 1920 enables the Federal Maritime Board fully to deal with non-conference competition in such way as to make the use of dual-rate systems by conferences unnecessary and, accordingly, to make the enactment into law of H. R. 12751 superfluous. Mr. Crinkley's argument, as reported, is completely fallacious.

So that you may be advised of my qualification to speak on this subject with some authority, I want to advise you that I was counsel who argued on behalf of the Japan-Atlantic and Gulf Freight Conference before the Supreme Court in the case which was decided on May 19, 1958, the decision in which has necessitated the adoption of H. R. 12751. Moreover, I was counsel who argued on behalf of the conference in *Far East Conference v. United States* (342 U. S. 570 (1952)). Further, I have represented conferences in their struggles against outside competition for a period of more than 25 years.

Section 19 of the Merchant Marine Act, 1920, so far as here relevant, is as follows:

"SEC. 19. (1) The Board is authorized and directed in aid of the accomplishment of the purposes of this Act :"

• • • • •
"(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; * * *"

It is perfectly clear from this language that the power of the Board under section 19 with reference to competitive methods and practices employed by ship owners is specifically limited to such methods and practices of foreign shipowners. The Board has absolutely no power under section 19 to deal with the competitive methods and practices of Isbrandtsen or any other shipowner insofar as it is operating American-flag tonnage. In all of the trade routes where Isbrandtsen has litigated the legality of conference dual-rate practices, it has been operating wholly or predominantly American-flag tonnage.

But the matter does not end there. The Board's power is inadequate to deal effectively with rate-cutting practices of even foreign-flag steamship owners. A case in point is *Section 19 Investigation, 1935* (1 U. S. S. B. B. 470 (1935)). I was counsel to the Far East Conference and its members in that case. I refer the committee especially to the portion of the report in the above case dealing with conditions in the trade from the Atlantic coast to the Far East appearing at pages 476 to 481. The committee will find that the "conditions unfavorable to shipping in the foreign trade" there involved were brought about by foreign-flag ship owners. Some of the rigors of the rate war with which the report deals are recounted in the statement filed with your committee by Mr. James A. Dennean who is now the chairman of the Far East Conference. After finding these unfavorable conditions and that they were brought about by practices of foreign-flag owners, the Secretary of Commerce who was then charged with the regulatory functions now vested in the Federal Maritime Board, ruled that he could go no

further than to adopt a regulation requiring all carriers of cargo outward from the United States to file their rates with the Board within 30 days after the several rates would become effective. Such a regulation was, accordingly, adopted.

Nonetheless, it is of record (see recommended decision of Chief Examiner Gus O. Basham, in F. M. B. dockets 726, 733, 734 and 735 served November 8, 1957—findings Nos. 11, 12, and 18) that the rate-cutting practices of the foreign-flag vessels continued unabated after the adoption of the regulation.

I submit that nothing in section 19 of the Merchant Marine Act, 1920, authorizes the Federal Maritime Board to deal at all with competitive methods of owners of American-flag vessels, or indeed, to deal effectively with cut-rate methods of foreign-flag operators. The powers under section 19 cannot perform the stabilizing function of a dual-rate system and, accordingly, in no way detract from the urgent necessity of the enactment of H. R. 12751.

Respectfully yours,

ELKAN TURK.

SHIPBUILDERS COUNCIL OF AMERICA,
New York, N. Y., June 18, 1958.

Re H. R. 12751 to amend the Shipping Act, 1916, to temporarily permit certain shipping conference dual-rate contract arrangements.

Hon. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House Office Building, Washington, D. C.*

DEAR MR. BONNER: Pending bill H. R. 12751 to temporarily endorse certain shipping conference dual-rate contract arrangements, has been reviewed by the Shipbuilders Council of America in the light of the May 19, 1958, decision of the United States Supreme Court in the so-called dual-rate cases. While the council, as representative of the shipbuilding and ship repair industry, has no opinion as to the merits of the dual-rate system controversy, still, it does appreciate the disturbing effect the decision can have on the American merchant marine and ultimately on the shipbuilding and ship repair industry. The council's concern is based on an acceptance of the premise that as a result of the Supreme Court decision the probability of rate wars and instability in the shipping industry is greatly increased.

A condition where rate wars are prevalent and, consequently, shipping rates are depressed, would obviously not be conducive to orderly ship replacement or adequate ship maintenance and repair. The shipping of all nations would be affected but the problems created would be most acute in this country.

For many years investment in American-flag tonnage was not considered attractive by prudent businessmen. It is only recently that the long-term statutory plan developed over the years in support of our merchant marine has been perfected to a point where it is really beginning to induce new private capital into American shipping. A degree of stability seems to have been finally reached with the result that even conservative investors are being attracted. The Supreme Court decision is viewed as a real threat to that necessary stability.

The council has noted with great misgiving the suggestion made in statements to the Committee by the representatives of the various American shipping lines, to the effect that the long-range replacement program just getting underway and other prospective new vessel construction is in jeopardy because of the decision. Obviously, the incidence of rate wars would greatly increase the problem of successfully financing vessel replacements. Even the mere prospects of such instability in ocean shipping rates could be enough of a discouraging factor to make it impossible for vessel operators to go to banks and insurance companies for the necessary credit.

The dual-rate system is reputed to be a keystone in the promotion of stability in shipping rates. Whether it actually is or not, the council cannot judge, but the council urges that Congress not stand by to see what will happen. The prompt enactment of H. R. 12751 will allow a sober review of the whole question. It will at least temporarily eliminate the threat of instability inherent in the Supreme Court decision.

The members of the Shipbuilders Council of America urge the enactment of pending bill H. R. 12751 or some legislation of this nature before adjournment of the present Congress so as to insure continued stability of shipping rates by restraining the effect of the Supreme Court's decision at least until the matter can be adequately considered and thus assuring that degree of continued stability in the American merchant marine necessary for the maintenance of an adequate and efficient shipbuilding and ship repair industry.

Respectfully yours,

L. R. SANFORD, *President.*

WASHINGTON, June 30, 1958.

Re H. R. 12751 to amend the 1916 Shipping Act in reference to the monopolistic exclusive patronage dual rate system.

HON. HERBERT C. BONNER,

*Chairman, Merchant Marine and Fisheries Committee,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: In support of my repeated contention that it is the foreign lines, rather than the American lines, which are pushing this legislation, I refer to certain portions of the minutes of the hearings where the support of conferences was offered, as follows:

Page 197: H. A. Carlys for 5 conferences out of the gulf, with 14 American line members and 31 foreign line members.

Pages 399-0: Mr. Leonard James, representing 11 conferences with 15 American line members and 127 foreign members.

Page 450: Charles H. Andrews, representing 8 conferences with 27 American line members and 115 foreign lines.

Page 454: George H. Foley, representing 7 conferences with 14 American line members and 79 foreign members.

Page 428: A. J. Pasch, representing 12 conferences with 28 American line members and 41 foreign line members.

Page 455: William C. Galloway, representing Pacific Westbound Conference, with 5 American line members and 13 foreign lines.

Page 449: James A. Dennean, representing 2 conferences with 11 American line members and 20 foreign.

The 3 other conferences supporting the bill have small membership—7 American lines to 12 foreign lines.

The above figures total representation of 87 American lines, as against 370 foreign lines which appeared to support this legislation.

There are, of course, duplications in those figures, because only 41 of the American freight lines (15 of them subsidized) out of a total of 112 American shipping companies (see U. S. Department of Commerce Publication, December 31, 1957) belong to conferences and only 24 of those 41 lines belong to conferences which see fit to use the dual rate system, in one-half of the total of 125 freight conferences. (The system is not used in the six passenger conferences.)

In less than 10 of the 63 conferences now using the system is there the slightest "independent competition" (affidavit of L. Tibbott of Federal Maritime Board), which competition is charged as giving rise to the absolute "need" for the system to assure "stability of rates" and "to prevent rate wars"—all of which were supposed to be taken care by the conference system itself, not the "vermiform appendix"—the dual rate system—illegally tacked on as the Supreme Court has now held.

Congress is being hoodwinked!

Please make his letter, as well as my other communications, a part of the printed record.

Respectfully,

JOHN J. O'CONNOR.

The CHAIRMAN. The committee will stand adjourned.

(Whereupon, at 4:35 p. m., the hearing was adjourned and the committee recessed subject to the call of the Chair.)

LEGISLATIVE HISTORY

Public Law 85-626
S. 3916

TABLE OF CONTENTS

Index and summary of S. 3916	.1
Digest of Public Law 85-626	.2

Index and summary of S. 3916

May	28, 1958	Sen. Magnuson introduced S. 3916 which was referred to the Senate Interstate and Foreign Commerce Committee. Print of bill as introduced.
June	2, 1958	Rep. Bonner introduced H. R. 12751 which was referred to the House Merchant Marine and Fisheries Committee. Print of bill as introduced.
June	11, 1958	Senate committee ordered S. 3916 reported with amendment.
June	13, 1958	Senate committee reported S. 3916 with amendment. S. Report No. 1709. Print of bill and report.
June	23, 1958	House committee ordered H. R. 12751 reported. Senate passed over S. 3916.
June	30, 1958	House committee reported H. R. 12751 without amendment. H. Report No. 2055. Print of bill and report.
July	2, 1958	Senate passed S. 3916 as reported.
July	29, 1958	Rules Committee reported resolution for consideration of H. R. 12751. H. Res. 652, H. Report No. 2303. Print of resolution and report.
July	30, 1958	House passed H. R. 12751 with amendment. House passage of H. R. 12751 was vacated; House passed S. 3916 in lieu of H. R. 12751, substituting language of H. R. 12751. H. R. 12751 was laid on the table due to the passage of S. 3916.
Aug.	1, 1958	Senate concurred in the House amendment to S. 3916.
Aug.	12, 1958	Approved: Public Law 85-626.

DIGEST OF PUBLIC LAW 85-626

CONTINUATION OF DUAL RATE CONTRACT AGREEMENTS. Amends the Shipping Act of 1916 so as to make lawful, until June 30, 1960, dual rate contract arrangements in use by members of a steamship conference on May 19, 1958. In the interim and subject to disapproval, cancellation or modification of the arrangements by the Federal Maritime Board, such steamship conferences may continue in effect tariffs of rates at two levels, the lower of which will be charged to merchants who agree to ship in vessels of conference members only.

85TH CONGRESS
2D SESSION

S. 3916

IN THE SENATE OF THE UNITED STATES

MAY 28, 1958

Mr. MAGNUSON (by request) introduced the following bill ; which was read twice and referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Shipping Act, 1916.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14 of the Shipping Act, 1916, is amended by
4 inserting at the end thereof the following: "*Provided, That*
5 nothing in this section, or elsewhere in this Act, shall be
6 construed or applied to forbid or make unlawful any dual-
7 rate contract arrangement in use by the members of a
8 conference on the effective date of this amendment, which
9 conference is organized under an agreement approved under
10 section 15 of this Act by the regulatory body administering
11 this Act. The term 'dual rate contract arrangement' as used
12 herein means a practice whereby a conference establishes

1 tariffs of rates at two levels, the lower of which will be
 2 charged to merchants who agree to ship their cargoes on
 3 vessels of members of the conference only and the higher
 4 of which shall be charged to merchants who do not so agree.”

5 SEC. 2. This Act shall be effective immediately upon
 6 enactment and shall cease to be effective on and after June
 7 30, 1960.

85TH CONGRESS
 2D Session

S. 3916

A BILL

To amend the Shipping Act, 1916.

By Mr. MAGNUSON

MAY 28, 1958

Read twice and referred to the Committee on
 Interstate and Foreign Commerce

85TH CONGRESS
2D SESSION

H. R. 12751

IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 1958

Mr. BONNER (by request) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Shipping Act, 1916.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14 of the Shipping Act, 1916, is amended by
4 inserting at the end thereof the following: "*Provided, That*
5 nothing in this section or elsewhere in this Act, shall be
6 construed or applied to forbid or make unlawful any dual
7 rate contract arrangement in use by the members of a con-
8 ference on the effective date of this amendment, which con-
9 ference is organized under an agreement approved under
10 section 15 of this Act by the regulatory body administering
11 this Act, unless and until such regulatory body disapproves,

1 cancels, or modifies such arrangement in accordance with
2 the standards set forth in section 15 of this Act. The term
3 'dual rate contract arrangement' as used herein means a
4 practice whereby a conference establishes tariffs of rates at
5 two levels the lower of which will be charged to merchants
6 who agree to ship their cargoes on vessels of members of
7 the conference only and the higher of which shall be charged
8 to merchants who do not so agree."

9 SEC. 2. This Act shall be effective immediately upon
10 enactment and shall cease to be effective on and after June
11 30, 1960.

85TH CONGRESS
2D SESSION

H. R. 12751

A BILL

To amend the Shipping Act, 1916.

By Mr. BONNER

JUNE 2, 1958

Referred to the Committee on Merchant Marine and
Fisheries

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 12, 1958
For actions of June 11, 1958
85th-2d, No. 94

CONTENTS

Agricultural exemption...7		
Appropriations.....6,12,16		
Banking currency.....22	Foreign trade.....1,13,19	Price support.....26
Committee assignments....4	Government ethics.....24	Reclamation.....29
Contracts.....27	Housing.....8,25	Research.....8,17
Corn.....17	Legislative program...6,16	Small business.....21
Dairy industry.....20	Livestock.....18	Statehood.....5
Defense production.....2	Marketing.....26	Taxation.....17
Disaster loans.....12	Minerals.....14	Transportation.....7,9
Economic situation.....15	Peanuts.....26	Water compact.....23
Electrification.....11	Personnel.....3	Wildlife.....10,28

HIGHLIGHTS: Senate passed omnibus transportation bill. Senate passed State-Justice appropriation bill. House passed trade agreements bill.

HOUSE

1. FOREIGN TRADE. Passed with amendment, 317 to 98, H. R. 12591, to extend the authority of the President to enter into trade agreements. pp. 9773-83, 9825, 9826
Rejected, 147 to 234, an amendment by Rep. Simpson, Pa., to substitute the text of his bill, H. R. 12676, which would have extend the Trade Agreements Act for only two years and further restricted the President's authority to enter into trade agreements. pp. 9776-81
Rejected a motion by Rep. Hoffman that the bill be reported back to the House with a recommendation that the enacting clause be stricken. pp. 9780-81
Rejected, 146 to 268, a motion by Rep. Reed that the bill be recommitted to the Ways and Means Committee. p. 9782
2. DEFENSE PRODUCTION. The Banking and Currency Committee ordered reported H. R. 10969, to extend the Defense Production Act until June 30, 1960. p. D528
3. PERSONNEL. The Post Office and Civil Service Committee reported without amendment S. 1901, to grant overtime pay for irregular and unscheduled hours of work beyond regular tours of duty (for fire fighters, etc.) (H. Rept. 1870). p. 9827

4. COMMITTEE ASSIGNMENTS. Rep. James resigned from the Appropriations Committee. Rep. Cederberg was elected to the Committee. p. 9783
5. STATEHOOD. Both Houses received petitions from the city and county clerk of Honolulu, Hawaii, favoring statehood for both Hawaii and Alaska. pp. 9828, 9692
6. LEGISLATIVE PROGRAM. Rep. McCormack announced that the public works appropriation bill will probably be considered today, June 12. p. 9784

SENATE

7. TRANSPORTATION. Passed with amendments S. 3778, to strengthen and improve the national transportation system (pp. 9715-22, 9735-67).

The bill includes a provision regarding the agricultural exemption clause of the Interstate Commerce Act, which was discussed in the committee report as follows:

"The committee favors a 'freeze' of the present status of the exemption recommended by the subcommittee. The committee further agrees that the 'freeze' should be on the basis of ruling No. 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, with the exception recommended by the subcommittee that the transportation of frozen fruits, frozen berries, and frozen vegetables be made subject to ICC regulation. Since ruling No. 107 does not list the items, such as fresh fruits and vegetables, about which there has been no controversy, the subcommittee language requires revision to reflect this condition.

"Further, the committee was in agreement that the subcommittee's language that 'imported agricultural products,' as distinguished from those produced domestically, be subjected to economic regulation should be eliminated. The problems engendered by commingling such imported products with domestic agricultural products, making the whole subject to regulation, would, in the committee's opinion, more than offset any gains to be made by subjecting imported agricultural products to regulation by the Commission."

Rejected an amendment by Sen. Beall, to exempt transportation of frozen fruits and vegetables from ICC regulation (pp. 9744-5, 9764).

8. HOUSING. The "Daily Digest" states that the Banking and Currency Committee approved for reporting by midnight, June 18, a clean bill entitled "Housing Act of 1958." As approved, the bill would "liberalize FHA insurance programs," "authorize a revolving fund of \$250 million to finance a new loan program to authorize the Housing Administrator to make loans to educational institutions for the construction of new, or rehabilitation of existing classrooms, laboratories, and related facilities, including equipment and utilities," and include provisions for "farm housing research, and surveys of public works plans." pp. D526-27

9. TRANSPORTATION. The Interstate and Foreign Commerce Committee ordered reported with amendment S. 3916, to extend for 2 years provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. p. D527

10. WILDLIFE. The Interstate and Foreign Commerce Committee ordered reported with amendments S. 3185, to promote the conservation of migratory fish and game by requiring approval by the Secretary of the Interior of licenses issued under the Federal Power Act, and S. 3725, to promote the conservation of wildlife, fish, and game. p. D527

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 16, 1958
For actions of June 13 and 14, 1958
Nos. 96 and 97

CONTENTS

Adjournment.....	17		
Agricultural appropriations.....	25		
Appropriations.....	6,10,25		
Arbor Day.....	15		
Cotton.....	21		
Defense production.....	1		
Education.....	8	Health.....	12
Experiment stations.....	3	Housing.....	23
Extension work.....	3	Legislative program.....	16
Farm program.....	9,20	Newsprint.....	22
Flood control.....	4,11	Pay raise.....	3
Foreign aid.....	19	Personnel.....	3,12
Foreign trade.....	13	Price control.....	7
		Reclamation.....	18,24
		Research.....	12
		Small business.....	5
		Supergrades.....	3
		Surplus commodities.....	23
		Telephone tax.....	14
		Transportation.....	2

HIGHLIGHTS: House committee ordered reported omnibus farm bill. Senate committee reported bill to extend Defense Production Act. Senate adopted conference report on pay raise bill.

SENATE - June 13

1. DEFENSE PRODUCTION. The Banking and Currency Committee reported without amendment S. 3323, to extend the Defense Production Act until June 30, 1960 (S. Rept. 1708). p. 9958
2. TRANSPORTATION. The Interstate and Foreign Commerce Committee reported with amendment S. 3916, to extend for two years provisions of the Shipping Act of 1916 relating to dual rate contract arrangements (S. Rept. 1709). p. 9958
3. PAY RAISE. Agreed to the conference report on S. 734, the pay raise bill for classified employees. The conferees agreed to provisions subjecting the qualifications of supergrade appointees to approval of the Civil Service Commission, increasing supergrade authorizations by 292, authorizing 5 additional Public Law 313 positions (up to \$19,000) for this Department, and expressing it as the sense of Congress that appropriations for extension work and experiment stations should include additional amounts for comparable pay increases. pp. 9975-78
4. FLOOD CONTROL. The Public Works Committee ordered reported with amendments S. 3910, the omnibus rivers and harbors and flood control bill. p. D538

5. SMALL BUSINESS. The Banking and Currency Committee ordered reported with amendment H. R. 7963, to extend the Small Business Act of 1953 and increase the SBA loan authority. p. D538
6. APPROPRIATIONS. Received from Treasury a report covering restoration of balances withdrawn from appropriation and fund accounts under the control of that Department. p. 9958
7. PRICE CONTROL. Sen. Kefauver spoke in favor of a voluntary price and wage control program, and urged the President to consider such a program. pp. 9961-62
8. EDUCATION. Sen. Wiley inserted an address by the U. S. Commissioner of Education on education inside the Soviet Union, "The Russian Race for Knowledge." pp. 9967-69

HOUSE - June 13

9. FARM PROGRAM. The Agriculture Committee ordered reported H. R. 12860, the omnibus farm bill. An amended and clean bill is to be introduced. p. D538
10. APPROPRIATIONS. Conferees agreed to file a report on Senate- and House-passed versions of H. R. 12540, the Commerce and related agencies appropriation bill for 1959. p. D539

SENATE - June 14

11. FLOOD CONTROL. The Public Works Committee reported with amendments S. 3910, the rivers and harbors and flood control bill (S. Rept. 1710). p. 10049
Agreed to print as S. Doc. 105 an interim report of the Army Engineers on Big Sandy River, Tug Fork, Ky., Va., and W. Va. p. 10131
12. PERSONNEL. Sen. Neuberger commended passage of the classified pay bill, and inserted an article he wrote urging a crash program for health research. p. 10052-4
13. FOREIGN TRADE. Sen. Proxmire inserted a telegram urging him to vote against reciprocal trade, and his reply concluding freer trade benefited Wisc. p. 10054
14. TELEPHONE TAX. Sen. Douglas inserted 30 editorials urging repeal of the Federal excise tax on telephone and two tables showing the taxes collected in each state from this source. pp. 10120-6
Sen. Humphrey inserted a resolution from the New Ulm, Minn., Rural Telephone Co., urging repeal of the excise tax on telephones. pp. 10048-9
15. ARBOR DAY. Sen. Javits inserted a resolution from the Essex County, N. Y., Board of Supervisors, urging that the last Fri. in April be designated National Arbor Day. p. 10048
16. LEGISLATIVE PROGRAM. Sen. Johnson announced that, following final consideration on the labor bill, certain bills would be taken up by motion, including the rivers and harbors and flood control bill. p. 10047
17. ADJOURNED until Mon., June 16. p. 10131

CONTINUING IN EFFECT UNTIL JUNE 30, 1960, DUAL-RATE CONTRACT AGREEMENTS APPROVED UNDER SECTION 15, SHIPPING ACT, 1916

JUNE 13, 1958.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

R E P O R T

[To accompany S. 3916]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3916) to amend the Shipping Act, 1916, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

THE AMENDMENT

On page 1, line 11, strike out "this Act.", and insert in lieu thereof the following:

this Act, unless and until such regulatory body disapproves, cancels or modifies such arrangement in accordance with the standards set forth in section 15 of this Act.

PURPOSE OF THE BILL

The bill would amend section 14 of the Shipping Act, 1916, to provide that nothing in that act shall be construed to forbid or make unlawful any dual-rate contract arrangement in effect at the time of enactment by members of a steamship conference organized under an agreement approved under section 15 of the act by the Federal Maritime Board.

The term "dual rate contract arrangement" as used in the bill means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which is charged to shippers who agree to ship their cargoes on vessels of members of the conference only and the higher of which is charged to merchants who do not so agree.

The bill would become effective immediately upon enactment, but it is of a temporary nature, and would continue in effect only until June 30, 1960, thus providing what is considered to be a reasonable time for a thorough consideration of the procedures necessary to resolve the dislocation resulting from a recent Supreme Court decision. The original act, insulated from many of the current problems, required two sessions for consideration and enactment.

The amendment would render any existing dual-rate contract arrangements valid unless canceled or modified by the Federal Maritime Board. It simply would continue on a temporary basis a system that has been used by both shippers and shipping lines over the years.

BACKGROUND OF THE BILL

The United States Supreme Court, on May 19, 1958, in *Federal Maritime Board v. Isbrandtsen Company, Inc., et al.*, declared illegal the dual-rate contract system of the Japan-Atlantic and Gulf Freight Conference. The Court found this particular system to be a "predatory device" designed to curtail competition, and stated, in part:

Since, as we hold, section 14, Third strikes down dual-rate systems only where they are employed as predatory devices, then precise findings by the Board as to a particular system's intent and effect would become essential to a judicial determination of the system's validity under the statute—

and

In view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing Isbrandtsen's competition, thus becoming a device made illegal by Congress in section 14, Third, we need not give controlling weight to the various treatments of dual rates by the Board under different circumstances.

Whether the above language from the Court's opinion would justify operation of a dual-rate system if it is not directed at a nonconference competitor or competitors, or whether, as Justice Frankfurter construed it in a dissenting opinion, it declares illegal all dual-rate systems, is certainly not clear. About the only point rendered unmistakably clear by the two opinions is that, as a result of the Court's decision, the shipping industry is likely to be plagued with widespread confusion and endless litigation over the months, and possibly years, ahead.

Such a chaotic situation would help neither the shipping lines, already beset with difficulties due to the decline in exports, nor the shippers. The shipping industry is a major segment of the national economy. Present ocean-cargo deficiencies, coupled with resulting intensified foreign shipping competition, have had a damaging impact upon United States-flag operators, both subsidized and unsubsidized. In addition, the subsidized operators are now facing the most costly vessel replacement program in history, with commitments running into the hundreds of millions of dollars. Without the assurance of stability in rates, and of a steady flow of cargoes, possible only through the Conference dual-rate system developed over the years, the industry has warned that it might well hesitate to go forward with the replacement program for which they are now committed.

Likewise a number of corporations and trade groups whose exports loom large in the Nation's profitable export trade, have urged action to preserve the dual-rate system. They state that this system, and this system alone, gives them the long-range assurance they need of stability in shipping charges and prompt shipment of their products to all parts of the world.

As one large national corporation expressed it, in urging passage of S. 3916:

Our company is not the largest exporter in terms of tonnage or dollars, but there are very few companies in this country which have a greater number of individual shipments to a greater number of international destinations, particularly in Latin America and the Far East.

We are believers in competition, but we believe in orderly competition and in orderly ratemaking procedures.

We have gone all through this business of competitive and orderly rate procedures in the making of freight rates by rail, by highway and by international water service. It would be most unfortunate and hurtful not only to this company but surely to industry in general if the established orderly procedures are summarily dismissed.

I would like the record to show the firm support of this company in the interest of sound, progressive, orderly and yet, with due recognition to competition, practical rate-making procedures.

The chief arguments made against the dual-rate system are (1) that it destroys competition and (2) that it causes ocean freight rates to be higher than they otherwise would be. Against this, it is argued, the conferences are open to all carriers to join, and the dual-rate system is open to all shippers, large or small. The preferential contract rate is a matter of public record, available to non-Conference operators and freight forwarders. Any vessel operator is free to undercut the Conference rate, and to attempt to woo away the shippers under contract thereto.

If, as alleged, Conference rates are higher than need be, the benefits from the dual-rate system must be an overriding consideration, for many of the largest exporters, industries and corporations have urged upon your committee enactment of this legislation to permit continuance of the dual-rate system. Opposition from industry to enactment is negligible by comparison.

Reports on the bill were received from the Treasury Department, the Department of Defense, and the Comptroller General of the United States, each of which reported "no recommendation." The Department of Commerce recommends enactment of the bill as amended by your committee. Its report is set forth below for the information of the Senate. Attached thereto is the statement of the Federal Maritime Board before the House Merchant Marine and Fisheries Committee, recommending enactment of this legislation.

Your committee has deemed it advisable to include in its report the opinion of the Supreme Court declaring the dual-rate agreements of the Japan-Atlantic and Gulf Freight Conference illegal.

Also, because of their pertinence to the problem, there are appended herewith excerpts from the report on the merchant marine study and

investigation made by your committee on August 30, 1950, pursuant to Senate Resolution 50, 81st Congress. The excerpts from Senate report 2494 submitted by the chairman of your committee at that time are as follows:

Rates in the foreign trade cannot be subject to the direct control of the Government. They are set through the medium of conference agreements between the American and foreign operators engaged in each particular service. The Merchant Marine Act of 1916, as amended, is the basic authority for American participation in shipping conferences.

In hearings which resulted in the 1916 act, Congress went very thoroughly into the question of shipping conferences, to determine what rate and other practices thereof should be prohibited as improper and oppressive, what measures to stabilize rates and services would be generally desirable in the public interest, and what procedure would be followed in filing, approving, and policing agreements among carriers. * * *

The committee conclusions were that conferences were necessary to prevent chaos in rates and services, and to check rate wars which tended to result in eventual monopolization of trade by a few big lines; and which also tended to favor the big shipper. * * *

As an aid in enforcing the conference agreements, ship operators have evolved the "contract rate system." This provides that shippers agreeing to give exclusive patronage to vessels of the conference lines are entitled to preferential rates on cargo, while those refusing to sign, or those not living up to the agreement, must pay higher rates, on the same type of cargo, taken on the same ship to the same port. It is contended by the operators that without such a system the conference would be meaningless, for there is not any other effective way under the law by which rates can be stabilized. It must be admitted that rate stability is a desirable objective.

The Maritime Commission and its predecessors charged with enforcing the law have recognized the contract rate system as legal. * * *

THE SECRETARY OF COMMERCE,
Washington, D. C., June 13, 1958.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 29, 1958, for the views of this Department with respect to S. 3916, a bill to amend the Shipping Act, 1916.

There is submitted herewith a copy of the statement by Mr. Ben H. Guill, Vice Chairman of the Federal Maritime Board, on the bill H. R. 12751, before the House Committee on Merchant Marine and Fisheries. This statement presents the position of the Board recommending enactment of the bill H. R. 12751, and is equally applicable

to the bill S. 3916, which is the same as H. R. 12751, except that, at the end of the proviso on page 1 of the House bill, there is added the clause: "unless and until such regulatory body disapproves, cancels or modifies such arrangement in accordance with the standards set forth in section 15 of this act."

The Senate bill, like the House bill, provides that the measure shall be effective until June 30, 1960. As indicated in the enclosed statement, this measure would maintain the status quo for 2 years while the Congress will have opportunity to study the merits of the dual-rate system involved in the recent Supreme Court decision of May 19, 1958.

The Board would recommend amendment of the Senate bill to correspond with the text of the House bill. Thus amended, the bill would maintain in the Board the regulatory and administrative powers under the standards of section 15 of the Shipping Act, 1916, during the interim period.

The Department of Commerce concurs with the Board in recommending the enactment of the Senate bill, amended as hereinbefore mentioned.

The Bureau of the Budget has advised that it interposes no objection to the submission of this report to the committee.

Sincerely yours,

WALTER WILLIAMS,
Acting Secretary of Commerce.

Enclosure.

STATEMENT OF BEN H. GUILL ON BEHALF OF THE FEDERAL MARITIME BOARD BEFORE THE COMMITTEE ON MERCHANT MARINE AND FISHERIES, HOUSE OF REPRESENTATIVES, ON THE BILL, H. R. 12751

My name is Ben H. Guill; I am Vice Chairman of the Federal Maritime Board. I am grateful for the invitation to testify on behalf of the Board in regard to H. R. 12751, in which the Board is vitally interested.

On May 19, 1958, the Supreme Court decided, in *Federal Maritime Board v. Isbrandtsen, et al.* that Congress did not intend by the Shipping Act, 1916, to authorize the Federal Maritime Board to approve the dual-rate system of ocean freight rates in foreign commerce that was involved in that case.

The dual-rate system employed by the Japan-Atlantic and Gulf Freight Conference provided a discount of 9½ percent to shippers who entered into contracts to ship exclusively on Conference vessels. The Board's approval of the system under section 15 of the 1916 act was reversed by the Supreme Court on the ground that such a system, designed to curtail competition from lines outside the conference, was unlawful under section 14, Third, as a "resort to * * * discriminating or unfair methods."

The decision casts grave doubt on the legality of most of the dual-rate systems presently employed by steamship conferences. It will, I believe, create a chaotic condition in regard to ocean shipping and the regulatory functions of the Board because of the precipitous change it will bring about in shipping practices engaged in with the sanction and approval of the Board and its predecessors for the last 40 years.

The purpose of the bill under consideration, H. R. 12751, is merely to maintain the status quo for 2 years, while Congress will study the

merits of the Conference dual-rate systems. Neither the purpose nor the effect of the bill is to overrule the judgment of the Supreme Court, because the issue before the Court was not the merits or the propriety of the dual-rate system. The only issue was whether Congress, in 1916, intended to permit the Board to approve such systems.

As a matter of fact, the Court of Appeals gave some recognition to the value of the dual-rate system in the case that ultimately gave rise to the bill under consideration, when it said:

"True it is, as the Board urges with much persuasion, the dual-rate system may be very potent in promoting stability and regularity of service and may be warranted by competitive considerations; but when at the same time the system constitutes retaliation and is also discriminatory it runs into the barrier of section 14, Third, however desirable it otherwise might be."

The only question presented by the bill is whether Congress should insure against the immediate, wholesale striking down of these systems, before any study is made as to the advantages or disadvantages of the system in the circumstances that exist today. It seems to me that the very fact that the system has so successfully withstood the test of time is ample justification for this limited extension. It has permitted self-regulation of freight rates in foreign waterborne commerce, under the regulatory supervision of the Board, and has contributed to rate stability and the provision of regular transportation service at reasonable cost in our foreign commerce. We respectfully suggest, therefore, that all that should be required in these circumstances, is a *prima facie* showing of the advantages of the system. Such a showing can readily be made.

The urgent reason for prompt action on the bill, therefore, is, of course, because of the great harm to shippers and shiplines which may take place before the next Congress even convenes. We apprehend that the Supreme Court decision will give rise to an immediate rash of litigation before the Board and the courts, unless the status quo is maintained pending further study by the Congress and all concerned with this critical problem.

The Board believes that enactment of this bill is vital to preserve stability of rates and services in the oceangoing foreign commerce of the United States and recommends that it be passed.

The Shipping Act, 1916, which this bill would amend, provides a statutory scheme especially designed to regulate an industry recognized to be unique in its international character, in its mobility, and in its nonsusceptibility to direct Government control.

Two things stand out in the legislative history of the Shipping Act, 1916:

First, it is apparent that Congress recognized that it was not feasible to have ocean freight rates in foreign commerce directly regulated by an agency of the United States Government. One of the predecessor bills to the ultimately enacted shipping bill provided for prescription of just and reasonable rates and for ship licensing in foreign commerce by a Government agency. This provision, however, was rejected after it was explained that it was not practical.

Second, Congress was aiming at a pattern of regulation which would prevent, on the one extreme, uncontrolled competition which would result in chaos in rates and service and, on the other extreme,

unregulated carrier combinations. The legislative history stresses the absolute necessity to the American shipper of stable rates and service. The Alexander Committee, upon whose investigation and report the Shipping Act was based, found that the Conference system, subject to the supervision of a Government agency, was the one force which could achieve these results.

For that reason, Congress, by section 15 of the Shipping Act, 1916, authorized the continuation of conferences in our foreign trade and provided for their regulation. But when competition becomes severe, conferences can only maintain their rate structures if they have some method of defending themselves against those carriers who are outside the Conference and cut rates. The outside carrier who cuts rates can make money because of the Conference "umbrella." That is, the Conference members must all maintain the same rates and each obtains his share of the cargo available largely on the basis of the service he offers without rate advantage. But the outsider, by cutting rates, can obtain a disproportionate share of available cargo and fill otherwise empty space with cargo that represents profit to the extent that the revenue therefrom exceeds the costs of loading and discharge. Usually the presence of the outside line does not have the effect of controlling the level of rates, because he merely maintains his rates at a percentage under the Conference rates. Thus, the main advantage to the consumer that is normally brought about by healthy competition is not present here. Nor does the presence of the outsider increase the volume of cargo moving in the trade—such rate cutting merely diverts the movement to another channel. If the outside carrier draws so much cargo that the Conference lines can no longer operate successfully, the Conference lines must soon abandon the Conference rate structure, and a rate war ensues. Thus, to effectively keep rates stable, the Conference must have some competitive defense against rate cutting by non-Conference lines and tramps.

The Supreme Court decision leaves grave doubt as to whether the Board can approve any dual-rate system which is found necessary to meet outside competition threatening to precipitate a rate war. While the applicability of the decision to specific facts can only be determined after full hearings, I can say at this time that the Supreme Court decision leaves an area of serious uncertainty in regard to the legality of many dual-rate systems now in use. The very existence of this uncertainty will be a disrupting factor for the future planning of ship lines and shippers.

The result of the Supreme Court's ruling can be a series of full-fledged rate wars in our foreign trades. It is essential to note that the great bursts of maritime activity which have taken place worldwide since the end of World War II have resulted in the reestablishment of merchant-marine capacities which, in the case of most of the leading maritime nations, are considerably higher than their pre-World War II levels. This, together with the currently depressed volumes of cargoes in world trade, has resulted in temporarily over-tonnaged conditions in many of the essential foreign trade routes of the United States. In each such trade route, the potential exists for chaotic rate wars unless stability can be insured by the continuing use of dual-rate systems, or some other regulation of rates.

It may interest the committee to know that after the courts restrained the use of the dual-rate system of the Japan-Atlantic and

Gulf Freight Conference, and while it was before the Board, the members of that Conference abandoned the tariff which they had been observing in favor of rate war conditions in which each line sought to secure whatever traffic it could by charging "fighting" rates. As a result Isbrandtsen, the independent price cutter, was virtually eliminated as an effective carrier in the trade, for it was itself unable—once the Conference tariff was abandoned—to meet the reduced rates forced by the resulting open competition.

It may be asked whether the return to free ocean competition would not be best for American importers and exporters. The answer is an emphatic "No." Shippers now, as in the days of the Alexander Committee investigation, need dependable service at stable and reasonable rates much more than they need the fluctuating, but lower, rates created by an unstable transportation market. Their preference has invariably been for stable rates which permit them to foresee and calculate their transportation costs—rather than for unstable rates which, although at times cheaper, are unpredictable. Fluctuating, open competitive rates introduce a speculative element into foreign trading and leaves exporters and importers uncertain whether their competitors are shipping at a lower rate. Shippers and receivers need to rely on forward sales, and resale prices are often fixed by importers months in advance of arrival of imported merchandise in the United States. Where transportation rates fluctuate, buyers cannot purchase or fix resale prices in advance because of the fear that their competitors who buy later may obtain cheaper shipping costs and thereby have a competitive advantage. Such conditions retard business.

Another reason many shippers desire stability is that they need frequent regularly scheduled sailings. But the losses that carriers incur as a consequence of rate wars prevent them from providing such services—in fact the usual result is that some of the carriers are forced out of the trade either through abandonment of nonprofitable services or by bankruptcy.

In the Japan-Atlantic case, the Board summarized the disadvantages to shippers of unstable rates, as follows:

"Many Japanese shippers have requested the Conference to close rates and to end the rate war. The instability resulting from the rate war has adversely affected the smooth flow of commerce between Japan and the United States; has raised a threat that customs duties on Japanese products in the United States might be increased; has affected the value of inventories of Japanese goods in the United States; and has caused requests for postponement of shipment by f. o. b. buyers in the United States, since such buyers assume the risk of fluctuating freight rates. Resale prices of Japanese goods are often fixed by the importers as much as 6 months in advance of their arrival in the United States."

Similar testimony which shows that shippers need stable rates rather than disruptive rate competition is included in many of the proceedings before the Board.

Abandonment of Conference tariffs, which may well result from the prohibition of dual rates in many trades, will not create permanent rate reductions. To the contrary, ocean transportation has not changed so radically that we cannot be guided by the following finding of the Alexander Committee:

"The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines. To terminate existing agreements would necessarily bring about 1 of 2 results: the lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong, or, to avoid a costly struggle they would consolidate through common ownership."

In 1950 the Senate Committee on Interstate and Foreign Commerce conducted a study of various aspects of the merchant marine including the regulation of freight rates and foreign commerce. The committee's report of its study (Rept. No. 2498, 81st Cong., 2d sess.) states on page 85 that in World War II the shipping conferences provided an instrumentality through which effective control of overseas rates was made possible and that the enhancement of the value of shipping space as a result of the war was not allowed to run the wild course it did during the first World War. The report goes on to state on page 85:

"On general cargo, for example, the increase during the first war, when rates were "what the traffic would bear" went up 1,117 percent, while rates during World War II on general cargo went up only 70 percent. And despite tremendous increases in costs of ship operation in the period between the 2 wars, the actual rate on general cargo in 1918 reached \$66 per ton, while during the more recent World War II, it never exceeded \$31.50 per ton on the North Atlantic-Europe run, for example. The record is replete with similar comparisons, but suffice it to say that with American participation in the trade route, and with conference discipline an established fact, great benefits, were made available to all the Allied Governments who paid rates more in line with the costs of operation rather than rates designed to permit excessive profiteering as a result of war enhancement."

An informative tabulation of freight rates between 1921 and 1923 is set out on page 232 of the report.

H. R. 12751 does not grant the Board authority to approve new dual-rate systems. Its purpose is simply to maintain the status quo by allowing conferences which now use the dual-rate system to continue its use and thereby prevent the chaos which will be the result of a wholesale abandonment of the system. Under this bill, precise regulatory safeguards are preserved by authorizing the Board to protect the public by disapproving any dual-rate system now in use which does not meet the standards of section 15; namely, that to be continued in use the system must not "be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of the act." The reference to "violation of the act" obviously is not deemed to refer to section 14, as interpreted by the Supreme Court, because such reference would negate the purpose of the bill.

We wholeheartedly endorse the bill before you.

SUPREME COURT OF THE UNITED STATES

Nos. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,
73 *v.*

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74 *v.*

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certio-
rari to the United
States Court of
Appeals for the
District of Co-
lumbia Circuit.

[May 19, 1958.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Isbrandtsen Co., Inc., filed a petition in the United States Court of Appeals for the District of Columbia Circuit to review, under 5 U. S. C. §1034, an order of the Federal Maritime Board¹ approving a rate system proposed by the Japan-Atlantic and Gulf Freight Conference (the Conference).² Under the proposed system a

¹ 4 F. M. B. 706. The Federal Maritime Board and its predecessors are hereinafter referred to as "the Board." Its predecessors were the United States Shipping Board (1916 to 1933); the United States Shipping Board Bureau in the Department of Commerce (1933 to 1936); and United States Maritime Commission (1936 to 1950).

² The Federal Maritime Board was named a respondent in Isbrandtsen's petition. The United States was also named as statutory respondent pursuant to 5 U. S. C. § 1034 but, appearing by the Department of Justice, joined Isbrandtsen in attacking the Board order. The Secretary of Agriculture intervened and joined in the

shipper would pay less than regular freight rates for the same service if he signs an exclusive-patronage contract with the Conference. Contract rates would be set at levels 9½ percent below noncontract rates. The Court of Appeals³ set aside the Board's order on the ground that this system of dual rates was illegal *per se* under § 14 of the Shipping Act, 1916, 39 Stat. 733, as amended, 46 U. S. C. § 812 Third.⁴ We granted certiorari. 353 U. S. 908.

Justice Department's brief. The Conference intervened by leave of the court. The same parties are before this Court.

³ 99 U. S. App. D. C. 312, 239 F. 2d 933.

⁴ Section 14 provides:

"No common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

"First. Pay or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper. The term 'deferred rebate' in this chapter means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

"Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term 'fighting ship' in this chapter means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

"Third. Retaliate against any shipper by refusing, or threatening to, refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

"Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly

The Conference is a voluntary association of 17 common carriers by water serving the inbound trade from Japan, Korea, and Okinawa to ports on the United States Atlantic and Gulf Coasts. Five of the carriers are American lines, eight are Japanese, and four are of other nationalities. The Conference presently operates under a Board approved Conference Agreement made in 1934. Prior to World War II, the Conference had no direct liner competition and little tramp competition.

After the war, Isbrandtsen entered the trade as the sole non-Conference line maintaining a regular berth service in the Japan-Atlantic trade. From 1947 to early 1949, Isbrandtsen operated from Japan to Atlantic Coast ports via the Suez Canal. Since 1949 Isbrandtsen has operated an approximately fortnightly service from Japan to United States Atlantic Coast ports via the Panama Canal as part of its Eastbound, Round-the-World Service.⁵

Although Conference membership is open to any common carrier regularly operating in the trade, Isbrandtsen has refused to join. Isbrandtsen's practice, between 1947 and March 12, 1953, was to maintain rates at approximately 10 percent below the corresponding Conference rates. The general understanding of shippers and carriers in the trade was that Isbrandtsen underquoted Conference rates by 10 percent. This practice of under-

treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

"Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense."

⁵ Isbrandtsen's vessels are not equipped with refrigerated space or silkrooms, as are many of the Conference vessels, and do not compete for cargoes requiring these facilities.

cutting Conference rates during the years 1950, 1951, and 1952, captured for Isbrandtsen 30 percent of the total cargo in the trade although Isbrandtsen provided only 11 percent of the sailings.⁶

Since outbound tonnage from the United States exceeds the inbound tonnage, the Japan-Atlantic and Gulf trade is presently over-tonnaged, and both Isbrandtsen and Conference vessels have had substantial unused cargo space after loading cargoes in Japan. Total sailings in the trade rose from 109 in 1949 to more than 300 in 1953. (Cf. Note 6, *supra*.) The re-entry of the Japanese lines in the trade after World War II, four in 1951 and four in 1952, greatly contributed to the excess of tonnage. For the years 1951, 1952, and the first 6 months of 1953, the Japanese lines carried approximately 15 percent, 49 percent, and 66 percent, respectively, of the trade's total liner cargo. For the years 1950, 1951, 1952, and the first 6 months of 1953, American flag lines, including Isbrandtsen but excluding two others, carried 53 percent, 46 percent, 34 percent, and 21 percent respectively.

When, in late 1952, Isbrandtsen announced a plan to increase sailings from two to three or four sailings a month, the Conference foresaw a further increase in

⁶ The comparative sailings and carryings are indicated in the following table:

Calendar year	Number of sailings			Cargo carried (revenue tons)			Average carryings per sailings		Percentage of total liner cargo	
	Is-brandt-sen	Conf.	Total	Is-brandt-sen	Conf.	Total	Is-brandt-sen	Conf.	Is-brandt-sen	Conf.
1949-----	6	103	109	18,099	135,635	153,734	3,016	1,317	12	88
1950-----	21	137	158	120,381	229,829	350,210	5,780	1,678	34	66
1951-----	21	174	195	93,450	219,343	312,793	4,450	1,261	30	70
1952-----	24	221	245	98,834	281,308	380,142	4,118	1,273	26	74
1953 — 6 months.	12	153	165	37,308	189,503	226,811	3,109	1,239	16	84

Isbrandtsen's participation which, because of the nationalistic preference of Japanese shippers, would probably be at the expense of the non-Japanese Conference lines. To meet this outside competition the Conference first attempted, in November of 1952, a 10 percent reduction in rates, but Isbrandtsen answered with a reduction of its rates 10 percent under the Conference rates.

On December 24, 1952, the Conference proposed the dual-rate system and filed its plan with the Board as required by the Board's General Order 76, 46 CFR § 236.3, which permitted proposed rate changes to become effective after 30 days unless postponed by the Board on its own motion or on the protest of interested persons. Protests were filed by Isbrandtsen and the Department of Justice. The Secretary of Agriculture intervened as an interested commercial shipper opposed to the proposal. On January 21, 1953, the Board ordered a hearing on the protests but refused, pending the Board's determination, to suspend operations of the dual-rate system. Isbrandtsen, therefore, filed a petition in the United States Court of Appeals for the District of Columbia Circuit for a stay of the Board's order insofar as it authorized the Conference to institute the dual-rate system. The court announced on February 3, 1953, that the Board's order would be stayed and the stay was entered on March 23, 1953.⁷

The Conference response to the stay was to open rates to allow each line to fix its own rates. At a meeting on March 12, 1953, the Conference voted to open Conference rates on 10 of the major commodities moving in the trade. The action was primarily directed at Isbrandt-

⁷ On January 21, 1954, the Court of Appeals handed down its final decision holding that § 15 of the Shipping Act required the Board to hold a hearing on the proposed dual-rate system before approval. 93 U. S. App. D. C. 293, 211 F. 2d 51.

sen's competition; the Board found that "it was hoped that the rate war would lead to Isbrandtsen's joining the Conference or to the institution of the dual rate system or other system." On succeeding dates in the spring of that year, the Conference opened rates on most of the major items in the trade. In the resulting rate war, the level of rates dropped to about 80 percent and later to about 30 percent to 40 percent of the pre-March 12 rates. In some instances, rates fell below handling costs. Isbrandtsen attempted to keep on a competitive basis in the rate war but, when pegging of minimum rates in May did not improve its position, in July it set its rates at 50 percent of the pre-March 12 Conference rates. Since that date, Isbrandtsen has carried little cargo in the trade. Meanwhile the Board proceeded with the hearing and issued its report on December 14, 1955, followed on December 21, 1955, and January 11, 1956, by orders approving the proposed dual-rate system.⁸ The question for our decision is whether the Court of Appeals correctly set aside the Board's orders.

It has long been almost universal practice for American and foreign steamship lines engaging in ocean commerce to operate under conference arrangements and agreements. At least by 1913 it was recognized that such agreements might run counter to the policy of the anti-trust laws; several cases were pending against foreign and domestic water carriers for alleged violations of the Sherman Act. The House Committee on Merchant Marine and Fisheries of the 62d Congress, of which committee Representative J. W. Alexander was Chairman, undertook an exhaustive inquiry into the practices of shipping conferences. The work of this Committee is

⁸ The Board did modify the exclusive-patronage contracts to delete from their coverage refrigerated cargoes for which Isbrandtsen did not compete.

set forth in two volumes of hearings,⁹ a volume of diplomatic and consular reports, and a fourth volume containing the Committee's report, known as the Alexander Report.¹⁰ Contemporaneously a British inquiry was conducted by the Royal Commission on Shipping Rings. The Royal Commission's report was available to the House Committee and was considered by it in formulating recommended legislation. See Hearings, 369.

Both inquiries brought to light a number of predatory practices by shipping conferences designed to give the conferences monopolies upon particular trades by forestalling outside competition and driving out all outsiders attempting to compete. The crudest form of predatory practice was the fighting ship. The conference would select a suitable steamer from among its lines to sail on the same days and between the same ports as the non-member vessel, reducing the regular rates low enough to capture the trade from the outsider. The expenses and losses from the lower rates were shared by the members of the conference. The competitor by this means was caused to exhaust its resources and withdraw from competition.

More sophisticated practices depended upon a tie between the conference and the shipper. The most widely used tie, because the most effective, was the system of deferred rebates. Under this system a shipper signed a contract with the conference exclusively to patronize its steamers, and if he did so during the contract term, and for a designated period thereafter, a rebate of a certain percentage of his freight payments was made to him at the end of the latter period. In this way, the shipper was under constant obligation to give his patron-

⁹ Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations under House Resolution 587, Hearings, 62d Cong. (Hereinafter "Hearings.")

¹⁰ H. R. Doc. No. 805, 63d Cong., 2d Sess. (Hereinafter "Report.")

age exclusively to the conference lines or suffer the loss of the rebate, which often amounted to a considerable sum.

But the Alexander Committee also found evidence of other predatory practices. Shippers who patronized outside competitors were denied accommodations for future shipments even at full rates of freight, or were discriminated against in the matter of lighterage and other services. Outside competition was also met by dual-rate contracts, by contracts with large shippers at lower rates for volume shipments, and by contracts with American railroads giving conference vessels preference in the handling of cargoes at the docks, and delivering through shipments of freight to conference vessels. Report, 287-293.

The Alexander Committee recommended against a flat prohibition of shipping combinations because it found that the restoration of unrestricted competition among carriers would operate against the public interest by depriving American shippers of desirable advantages of conference arrangements honestly and fairly conducted. The Committee mentioned advantages such as "greater regularity and frequency of service, stability and uniformity of rates, economy in the cost of service, better distribution of sailings, maintenance of American and European rates to foreign markets on a parity, and equal treatment of shippers through elimination of secret arrangements and underhanded methods of discrimination." *Id.*, at 416. The Committee believed that these advantages could be preserved "only by permitting the several lines in any given trade to cooperate through some form of rate and pooling arrangement under Government supervision and control," *ibid.*, and further "that the disadvantages and abuses connected with steamship agreements and conferences as now conducted are inherent, and can only be eliminated by effective government con-

trol; and it is such control that the Committee recommends as the means of preserving to American exporters and importers the advantages enumerated, and of preventing the abuses complained of." *Id.*, at 418.

In passing the Shipping Act of 1916, 39 Stat. 733, as amended, 46 U. S. C. § 812 Third, Congress followed the basic recommendations of the Alexander Committee.¹¹ The Act does not forbid shipping conferences in foreign commerce but requires all conference agreements covering the subjects mentioned in § 15 to be submitted for Board approval.¹² No power to fix rates is granted to

¹¹ H. R. Rep. No. 659, 64th Cong., 1st Sess. 27; see S. Rep. No. 625, 64th Cong., 1st Sess. 7. The Alexander Report was submitted in 1914 to the 63d Congress and a bill to carry out its recommendations was introduced but not passed. H. R. 17328, 63d Cong., 2d Sess. In the following Congress substantially the same bill was reintroduced, H. R. 15455, 64th Cong., 1st Sess., and became the Shipping Act of 1916.

¹² Section 15 provides:

"Every common carrier by water, or other person subject to this chapter, shall file immediately with the Federal Maritime Board a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

"The Board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers,

the Board. Subject to familiar limitations, the power vested in the Board is to approve agreements not found to be unjustly or unfairly discriminatory in violation of §§ 16 and 17 or otherwise in violation of the Act. Approved agreements are exempted from the antitrust laws.

But it must be emphasized that the freedom allowed conference members to agree upon terms of competition subject to Board approval is limited to the freedom to agree upon terms regulating competition among themselves. The Congress in § 14 has flatly prohibited practices of conferences which have the purpose and effect of stifling the competition of independent carriers. Thus the deferred rebate system (§ 14 First) and the fighting ship (§ 14 Second) are specifically outlawed. Similarly, § 14 Third prohibits another practice, common in 1913: to “[r]etaliat[e] against any shipper by refusing . . . space accommodations when such are available . . .”; that prohibition, moreover, is enlarged to condemn retaliation not only when taken “because such shipper has patronized any other carrier” but also when taken because the shipper “has filed a complaint charging unfair treatment, *or for any other reason.*” (Emphasis added.)

But in addition to these specifically proscribed abuses, Congress, as previously noted, was aware that other devices—some known but not so widely used, and others that might be contrived—might be employed to achieve the same results. Therefore, coordinate with these three clauses aimed at specific practices, a fourth category,

or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations.

“Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the [Antitrust Acts]” 39 Stat. 733, as amended, 46 U. S. C. § 814.

couched in general language, was added: "resort to other discriminating or unfair methods" In the context of § 14 this clause must be construed as constituting a catch-all section by which Congress meant to prohibit other devices not specifically enumerated but similar in purpose and effect to those barred by § 14 First, Second, and the "retaliate" clause of § 14 Third.

The reason the "resort to" clause was added to the statute as an independent prohibition of practices designed to stifle outside competition is revealed in the Alexander Report. From information contained in the Report of the British Royal Commission and a communication from a major New York carrier organization, the Alexander Committee was aware that the outlawing of the deferred-rebate system would lead conferences to adopt a contract system to accomplish the same result. The British Royal Commission believed that ties to shippers were justified and that the abuses of the deferred-rebate system should be tolerated in the interest of achieving a strong conference system. Hearings, 369-381. However, the Alexander Committee, and the Congress in adopting the Committee's proposals, reached a different conclusion. Congress was unwilling to tolerate methods involving ties between conferences and shippers designed to stifle independent carrier competition. Thus Congress struck the balance by allowing conference arrangements passing muster under §§ 15, 16, and 17 limiting competition among the conference members while flatly outlawing conference practices designed to destroy the competition of independent carriers.¹³ Ties

¹³ Both the section which became § 14 Third and the section which became § 15, as originally proposed, used the language "discriminating or unfair." H. R. 17328, 63d Cong., 2d Sess. The bill which became the Shipping Act, H. R. 15455, 64th Cong., 1st Sess., substituted "unjustly discriminatory or unfair" in § 15 but left untouched "discriminatory or unfair" in § 14 Third.

to shippers not designed to have the effect of stifling outside competition are not made unlawful. Whether a particular tie is designed to have the effect of stifling outside competition is a question for the Board in the first instance to determine.

Since the Board found that the dual-rate contract of the Conference was "a necessary competitive measure to offset the effect of non-conference competition" required "to meet the competition of Isbrandtsen in order to obtain for its members a greater participation in the cargo moving in the trade,"¹⁴ it follows that the contract was a "resort to other discriminating or unfair methods" to stifle outside competition in violation of § 14 Third.

The Board argues, however, that Congress, although aware of the use of such contracts, did not specifically outlaw them and therefore implicitly approved them. But the contracts called to the attention of Congress bear little resemblance to the contracts here in question. Those joint contracts were described by the Alexander Committee as follows:

"Such contracts are made for the account of all the lines in the agreement, each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified

¹⁴ The Board estimated that Isbrandtsen would lose approximately two-thirds of its 1952 volume. ". . . [I]t [is] probable that Isbrandtsen will retain 10 percent or more of the cargo moving in the trade as against the 26 percent carried by it in 1952" 4 F. M. B. 706, —.

in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, i. e. are willing at all times to contract with all shippers on the same terms." Report, 290.

These contracts were very similar to ordinary requirements contracts. They obligated all members of the Conference to furnish steamers at regular intervals and at rates effective for a reasonably long period, sometimes a year. The shipper was thus assured of the stability of service and rates which were of paramount importance to him. Moreover, a breach of the contract subjected the shipper to ordinary damages.

By contrast, the dual-rate contracts here require the carriers to carry the shipper's cargo only "so far as their regular services are available"; rates are "subject to reasonable increase" within two calendar months plus the unexpired portion of the month after notice of increase is given; "[e]ach Member of the Conference is responsible for its own part only in this Agreement"; the agreement is terminable by either party on three months' notice; and for a breach, "the Shipper shall pay as liquidated damages to the Carriers fifty per centum (50%) of the amount of freight which the Shipper would have paid had such shipment been made in a vessel of the Carriers at the Contract rate currently in effect." Until payment of the liquidated damages the shipper is denied the reduced rate, and if he violates the agreement more than once in 12 months, he suffers cancellation of the agreement and the denial of another until all liquidated damages have been paid in full. Thus under this agreement not only is there no guarantee of services and rates for a reasonably long period, but the liquidated-damages provision bears a strong resemblance to the feature which Congress particularly objected to in the outlawed deferred rebate

system. Certainly the coercive force of having to pay so large a sum of liquidated damages ties the shipper to the Conference almost as firmly as the prospect of losing the rebate. It would be anomalous for Congress to strike down deferred rebates and at the same time fail to strike down dual-rate contracts having the same objectionable purpose and effect. Events have proved the accuracy of the prediction that the outlawing of the deferred-rebate system would lead conferences to adopt a contract system, as here, specially designed to accomplish the same result.

It is urged that our construction "produces a flat and unqualified prohibition of *any* discrimination by a carrier for *any* reason" and converts the rest of the statute into surplusage. But that argument overlooks the revealed congressional purpose in § 14 Third. That purpose, as we have said, was to outlaw practices in addition to those specifically prohibited elsewhere in the section when such practices are used to stifle the competition of independent carriers. The characterization "unjustly discriminatory" and "unjustly prejudicial" found in other sections (§§ 15, 16 and 17) imply a congressional intent to allow some latitude in practices dealt with by those sections, but the practices outlawed by the "resort to" clause of § 14 Third take their gloss from the abuses specifically proscribed by the section; that is, they are confined to practices designed to stifle outside competition.¹⁵

¹⁵ The Court of Appeals made a partial application of the rule of *ejusdem generis* and related the "resort to" clause to retaliation, holding the dual-rate contract or suit was retaliatory and within the ban of the section. The Board urges that the Court of Appeals did not carry the rule of *ejusdem generis* far enough, that by carrying the rule "a hand's breadth farther" and also relating—and limiting—the "resort to" clause to the refusal of space accommodations and *similar services* to shippers, the dual-rate contract falls without the

Petitioners argue that our construction of § 14 Third is foreclosed by this Court's decisions in *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, and *Far East Conference v. United States*, 342 U. S. 570. A reading of those opinions immediately refutes any suggestion either that this issue was expressly decided in those cases or that our holding here is not fully consistent with the disposition of those cases. In *Cunard* the petitioner had filed a complaint in the District Court alleging that respondents had conspired to maintain "a general tariff rate and a lower contract rate, the latter to be made available only to shippers who agree to confine their shipments to the lines of respondents." The differentials were alleged to be unrelated to volume or regularity of shipments, but to be wholly arbitrary and unreasonable and designed "for the purpose of coercing shippers to deal exclusively with respondents and refrain from shipping by the vessels of petitioner, and thus exclude it entirely from the carrying trade between the United States and Great Britain." An injunction was sought under the Sherman and Clayton Acts. The Court held that the questions raised by this complaint were within the primary jurisdiction of the Shipping Board and therefore the courts could not entertain the suit until the Board had considered the matter. In *Far East Conference* the Court similarly held that the Board's primary jurisdiction precluded the United States from bringing antitrust proceedings against a shipping conference maintaining dual rates.

The Board and the Conference argue that, if the Court in these earlier cases had thought that § 14 Third in any

prohibition because the contract is concerned only with *charges for services* and not with *denial of services*. We do not believe that these constructions can be reconciled with the language of the statute or the scope of the congressional plan.

way makes dual rates *per se* illegal and thus not within the power of the Board to authorize, it would not have found it necessary to require that the Board first pass upon the claims. But in the *Cunard* case the Court said:

“Whether a given agreement among such carriers should be held to contravene the act may depend upon a consideration of economic relations, of facts peculiar to the business or its history, of competitive conditions in respect of the shipping of foreign countries, and of other relevant circumstances, generally unfamiliar to a judicial tribunal, but well understood by an administrative body especially trained and experienced in the intricate and technical facts and usages of the shipping trade; and with which that body, consequently, is better able to deal.” 284 U. S. 474, 485.

Similarly, in the *Far East Conference* case:

“The Court [in *Cunard*] thus applied a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. *This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined.* Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.” 342 U. S. 470, 574–575. (Emphasis added.)

It is, therefore, very clear that these cases, while holding that the Board had primary jurisdiction to hear the case in the first instance, did not signify that the statute left the Board free to approve or disapprove the agreements under attack. Rather, those cases recognized that in certain kinds of litigation practical considerations dictate a division of functions between court and agency under which the latter makes a preliminary, comprehensive investigation of all the facts, analyzes them, and applies to them the statutory scheme as it is construed. Compare *Denver Union Stock Yard Co. v. Producers Livestock Marketing Assn.*, 356 U. S. —. It is recognized that the courts, while retaining the final authority to expound the statute, should avail themselves of the aid implicit in the agency's superiority in gathering the relevant facts and in marshaling them into a meaningful pattern. Cases are not decided, nor the law appropriately understood, apart from an informed and particularized insight into the factual circumstances of the controversy under litigation.

Thus the Court's action in *Cunard* and *Far East Conference* is to be taken as a deferral of what might come to be the ultimate question—the construction of § 14 Third—rather than an implicit holding that the Board could properly approve the practices there involved. The holding that the Board had primary jurisdiction, in short, was a device to prepare the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court of the scope and meaning of the statute as applied to those particular circumstances. To have held otherwise would, necessarily, involve the Court in comparatively abstract exposition.

This consideration, moreover, is particularly compelling in light of our present holding. Since, as we hold, § 14 Third strikes down dual-rate systems only where they are employed as predatory devices, then precise findings by the Board as to a particular system's intent and effect

would become essential to a judicial determination of the system's validity under the statute. In neither *Cunard* nor *Far East Conference* did the Court have the assistance of such findings on which to base a determination of validity. We conclude, therefore, that the present holding is not foreclosed by these two cases.¹⁶

Finally, petitioners argue that this Court should not construe the Shipping Act in such a way as to overturn the Board's consistent interpretation. "[T]he rulings, interpretations and opinions of the [particular agency] . . . , while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U. S. 134, 140. But we are here confronted with a statute whose administration has been shifted several times from one agency to another, and it is by no means clear that the Board and its predecessors have taken uniform and consistent positions in regard to

¹⁶ Certainly it must be assumed that the Court would refrain from settling *sub silentio* an issue of such obvious importance and difficulty plainly requiring a clearly expressed disposition.

Petitioners' reliance on *Swayne & Hoyt, Ltd., v. United States*, 300 U. S. 297, is similarly misplaced. In that case the Court upheld the administrative determination that a dual-rate system gave an "undue or unreasonable preference or advantage" under § 16 of the Shipping Act. Because the Court sustained the finding as supported by substantial evidence it did not need to reach the more contentious problem of whether that particular contract was illegal under § 14 Third.

the validity of dual-rate systems under § 14 Third.¹⁷ See *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 889–891. In view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing Isbrandtsen's competition, thus becoming a device made illegal by Congress in § 14 Third, we need not give controlling weight to the various treatments of dual rates by the Board under different circumstances.

Affirmed.

¹⁷ Compare, *e. g.*, *Eden Mining Co.*, 1 U. S. S. B. 41, and *Contract Routing Restrictions*, 2 U. S. M. C. 220, 226–227, with *The Rawleigh Co.*, 1 U. S. S. B. 285, 290.

SUPREME COURT OF THE UNITED STATES

Nos. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,

73 v.

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74 v.

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May 19, 1958.]

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE BURTON joins, dissenting.

The Court today holds that any dual system of international steamship rates tied to exclusive patronage contracts that is designed to meet outside competition—howsoever justified it may be as a reasonable means of counteracting cut-throat competition—violates § 14 of the Shipping Act of 1916¹ and cannot be approved by the Federal Maritime Board pursuant to § 15 of that Act. The Court thus outlaws a practice that has prevailed among international steamship conferences for half a century,² that is presently employed by at least half of the hundred-odd conferences subject to Board jurisdic-

¹ 39 Stat. 728, 733, as amended, 46 U. S. C. § 812.

² See, *e. g.*, agreements set forth at pp. 262-263 of Hearings before the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations, 62d Cong.

tion,³ and that has been found by the Board in this case to decrease the probability of ruinous rate wars in the shipping industry.⁴ In doing so, the Court does more than set aside a weighty decision of the Federal Maritime Board. It could do so only by rendering meaningless two prior decisions in which this Court respected the power given by Congress to the Board, within the usual limits of administrative discretion, to approve or disapprove such agreements.

The agreement involved in this case is typical of the contracts used by the loose associations of steamship lines known as "conferences" to effectuate their dual-rate systems. See Marx, *International Shipping Cartels*, 207-210. The contracting shipper agrees to forward all of his shipments moving in the "trade" or route of the conference by bottoms of conference members (§ 1). In return, the conference members, "so far as their regular services are available," agree to carry the shipper's goods at rates below those charged to noncontracting shippers; rates are subject to reasonable increase upon specified notice (§ 2). The conference members agree to maintain service adequate to the reasonable requirements of the trade, and if they fail to provide the shipper (who may ordinarily select which of the conference members' vessels will carry his goods) with needed space, he may obtain space from nonconference carriers (§ 4). If the shipper makes any shipments in violation of the agreement, he must pay as liquidated damages 50 percent of

³ Respondent Isbrandtsen, in its petition to the Court of Appeals to review the order of the Federal Maritime Board stated (at par. 10b.) that "[o]f the about one hundred seventeen steamship freight conferences organized pursuant to Section 15 of the Shipping Act, and subject to the jurisdiction of the Board, about sixty-two conferences presently employ that system" See also Marx, *International Shipping Cartels*, 207.

⁴ 4 F. M. B. 706, —, —, 1956 Am. Mar. Cas. 414, 451, 454.

the amount of freight he would have paid if he had made the shipment under the contract, and he is not entitled to contract rates until he pays these damages (§ 5). If the shipper violates the agreement more than once in a twelve-month period, the agreement is canceled, and no new agreement will be entered into until all damages are paid (*ibid.*). Either party may cancel the agreement on three months' notice (§ 9), and any dispute arising out of the agreement is to be submitted to arbitration (§ 10).

Such differences as exist among the dual-rate systems that have for long been in wide use in international ocean transportation are irrelevant if each such system is to be judged by the new test laid down by the Court: is it aimed at meeting outside competition? Of course these exclusive patronage contracts and the dual-rate systems of which they are an integral part are designed to meet nonconference competition. And there should be no mistake but that today's decision outlaws such systems. This result cannot be clouded by the Court's reliance upon "findings" of the Board that it

"consider[s] the inauguration of a dual rate system to be a necessary competitive measure to offset the effect of non-conference competition in this trade" (4 F. M. B. 706, —, 1956 Am. Mar. Cas. 414, 450.)

and that

"a reduction in the amount of conference sailings or other solution to the overtonnaging problem would not mitigate the conference's need to meet the competition of Isbrandtsen in order to obtain for its members a greater participation in the cargo moving in the trade." (4 F. M. B., at —, 1956 Am. Mar. Cas., at 451.)

These statements in the Board's opinion are nothing more than a recognition of the dual-rate system as a device for meeting outside competition; they provide a basis neither

for distinguishing the situation before us from any other familiar use of a dual-rate system nor for concluding that the conference members in this case instituted the system in order to "stifle" outside competition.

While limits have been imposed upon enterprise in meeting competition, which is itself the governing principle of our economic system, these limits, embodied in the antitrust laws, were found to be inapplicable to, because destructive of our national interest in, the international ocean transportation industry. The United States obviously could not completely regulate the foreign carriers with whom American carriers compete (not to mention the carriers that serve foreign shippers with whom American shippers compete). In view of the prevailing characteristics of the industry, it early became apparent that it would, on the whole, be in the national interest to tolerate some practices of steamship lines that in other industries would be deemed inadmissible. For the alternative, so it was concluded, would be to put it within the power of unregulated foreign carriers seriously to injure American firms—both carriers and shippers—if not, indeed, to put them out of business. And so, in the development of a scheme for regulating this international industry, self-protective measures by way of collective action were not left to the condemnation of the Sherman and Clayton Acts. In order to appreciate the Shipping Act of 1916 as an attempt to balance the need for some regulation with the economic and political objections to sweeping the shipping industry under the antitrust concept, the circumstances that begot the Act must be recalled.

The second half of the Nineteenth Century saw a tremendous rise in the development of ocean transportation by steamship. Unfortunately, the supply of available cargo space increased during this period much more rapidly than the demand for it. The inevitable result

was cut-throat competition among steamship owners. This in turn was followed by mergers of ownership and by concerted efforts among individual owners to limit competition. The practices by which this end was pursued led to abuses and demands for their correction, to which a number of governments at the turn of the century began to direct their attention. A series of investigations of rates and practices in various parts of the British Empire was followed by the appointment in 1906 of the Royal Commission on Shipping Rings, which rendered its report in 1909. See, generally, Marx, *supra*, at 45-50; see also Johnson and Huebner, *Principles of Ocean Transportation*, 263-302. In the United States, the Department of Justice in 1911 brought two proceedings against three steamship conferences to enjoin competitive practices in alleged violation of the Sherman Act, *United States v. Prince Line, Ltd.*, 220 F. 230; *United States v. Hamburg-American S. S. Line*, 216 F. 971.⁵

The terms of the resolutions that gave rise to the historic investigation of shipping combinations by the House Committee on the Merchant Marine and Fisheries in 1912-1913, H. Res. 425 and H. Res. 587, 62d Cong., 2d Sess., 48 Cong. Rec. 2835-2836, 9159-9160, manifest the concern of Congress over these steamship conferences and their practices. The investigation was thorough and detailed. The Committee, under the chairmanship of Representative Joshua W. Alexander of Missouri, elicited great quantities of relevant data from shippers, carriers, trade organizations and the Departments of State and Justice, including copies of many kinds of agreements among carriers and between carriers and shippers, and it held extensive hearings in January-March,

⁵ On appeal, the very limited decrees obtained by the Government against some members of two of the conferences were reversed, 239 U. S. 466, 242 U. S. 537, and the suits directed to be dismissed on the score of mootness because of World War I.

1913. Fully considered were exclusive patronage agreements between shippers and conferences providing for a dual rate, see, *e. g.*, Hearings before the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations, 62d Cong., 248, 254, 262–263; see also *id.*, at 246, 263.

In 1914 the Committee submitted its comprehensive report. In summarizing the competitive methods used by steamship conferences in the American foreign trade, the report discussed, under the heading “*Meeting the competition of lines outside of the conference*,” deferred rebate systems, the use of fighting ships, agreements with American railroads, and such types of contracts with shippers as individual requirements contracts, contracts giving preferential rates to large shippers, and the following:

“(a) *Joint contracts made by the conference as a whole*.—Such contracts are made for the account of all the lines in the agreement, each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, i. e. are willing at all times to contract with all shippers on the same terms.” Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade, 63d Cong. 290.

There can be no doubt that the Committee was amply alive to the primary purpose of the dual-rate system. But it did not, in subsequently discussing (*id.*, at 304–307)

the "Disadvantages of Shipping Conferences and Agreements, as Now Conducted," make any reference to the system as such, although it dealt extensively and disapprovingly, on the basis of evidence put before it, with such practices as deferred rebates, fighting ships, and retaliation against shippers for airing grievances. Nor were there any strictures against dual-rate systems in the survey of recommendations of witnesses at the hearings for corrective legislation (*id.*, at 307-314), although it was there noted that recommendations were made in favor of prohibitions against deferred rebates and retaliation by refusal of accommodations to a shipper because "he may have shipped by an independent line, or may have filed a complaint charging unfair treatment, or for other unjust reasons." *Id.*, at 313.

In making its own recommendations (*id.*, at 415-421), the Committee recognized that steamship lines almost universally form conferences and enter into agreements for the purpose (among others) of "meeting the competition of non-conference lines." *Id.*, at 415. The Committee recognized that it had to choose between prohibition of these conferences or subjection of them to government supervision.

"It is the view of the Committee that open competition can not be assured for any length of time by ordering existing agreements terminated. The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines." *Id.*, at 416.

To prohibit existing arrangements, said the Committee, would be to invite rate wars leading to monopoly or to the exposure of American shippers and lines to disastrous

competition with foreign shippers and lines. Among the complaints relating to existing conditions was "the unfairness of certain methods—such as fighting ships, deferred rebates, and threats to refuse shipping accommodations—used by some conference lines to meet the competition of nonconference lines." *Id.*, at 417. The Committee concluded that the system of conferences and agreements was not to be uprooted. Its disadvantages and abuses must be curbed by effective government control.

Among the specific recommendations of the Committee were that carriers be required to file for approval with the regulatory agency (the Committee recommended use of the Interstate Commerce Commission) any agreements among themselves or with shippers, with the agency being empowered to cancel agreements it found to be "discriminating or unfair in character, or detrimental to the commercial interests of the United States" (*id.*, at 420); that the agency be empowered to investigate and institute proceedings concerning rates that are "unreasonably high, or discriminating in character as between shippers" (*ibid.*), and

" . . . That the use of 'fighting ships' and deferred rebates be prohibited in both the export and import trade of the United States. Moreover, all carriers should be prohibited from retaliating against any shipper by refusing space accommodations when such are available, or by resorting to other unfair methods of discrimination, because such shipper has patronized an independent line, or has filed a complaint charging unfair treatment, or for any other reason." *Id.*, at 421.

The cautious generality of the latter portion of this last recommendation (and, surely, of the legislative provision based on it) doubtless reflects a feeling on the part of the Committee that many shippers refrained from de-

scribing the various forms of and reasons for retaliation against them by carriers, for fear that they would subsequently be retaliated against for making the disclosures. See, *e. g.*, *id.*, at 5.

The report of the Committee was filed in February 1914, and four months later Representative Alexander introduced a bill, H. R. 17328, incorporating its recommendations. The bill provided, among other things, that carriers be required to file for approval with the Interstate Commerce Commission any of a wide variety of agreements, that the Commission be empowered to cancel or modify agreements that it found "discriminating or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or that it may find to operate to the detriment of the commerce of the United States, or that may be in violation of this Act," and that agreements when approved should be exempt from the anti-trust laws (§ 3). Where the Commission was of the opinion that rates, charges, classifications, regulations or practices were "unjust or unreasonable," it was empowered to determine and enforce what would be just and reasonable under the circumstances (§ 7). And the bill (§ 2) provided that it should be a misdemeanor (punishable by fine of up to \$25,000) for any carrier to allow deferred rebates, use a fighting ship, or:

"Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment or for any other reason."

As no action was taken on H. R. 17328 in 1914, it was reintroduced by Mr. Alexander in the 64th Congress late in 1915 as H. R. 450. Shortly thereafter he introduced H. R. 10500, a bill "To establish a United States Shipping

Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions, and with foreign countries, and for other purposes." That bill authorized the Board to purchase or charter commercial vessels to be leased to private concerns in peacetime and used as a naval auxiliary in wartime; the bill also (§§ 9, 10) provided for very general regulation by the Board of the ocean transportation industry.

Approximately two months later, in April 1916, Mr. Alexander introduced H. R. 14337, which adapted his earlier regulatory bill (H. R. 450) to the administrative framework of the Shipping Board bill (H. R. 10500). The bill was considered in committee with a view to substituting its provisions for the general regulatory language of §§ 9 and 10 of the Shipping Board bill. See Hearings before the House Committee on the Merchant Marine and Fisheries on H. R. 14337, 64th Cong., 1st Sess. 5. In these hearings, there was no discussion of the "retaliation" provision of the bill; attention was concentrated on its more controversial aspects, such as the power of the Board to regulate rates.

At the close of these hearings, in early May 1916, a new Shipping Board bill, H. R. 15455, in which the substitution of the more detailed regulatory provisions had been made, was introduced by Mr. Alexander. The bill added a "Fourth" to the prohibitions against deferred rebates, fighting ships and retaliation: unfair or unjustly discriminatory contracts with or treatment of shippers under specified circumstances; the standard ("discriminating and unfair") in the provision empowering the Board to cancel or modify agreements became "unjustly discriminatory and unfair." The bill was promptly reported out of the Merchant Marine and Fisheries Com-

mittee with a report that set forth *in extenso* the recommendations in the 1914 report of the investigation of the shipping industry. H. R. Rep. No. 659, 64th Cong., 1st Sess. 27-31. The debate in the House centered around the ship purchase and lease provisions of the bill, and the bill passed the House with no detailed consideration of the regulatory provisions. In the Senate, the hearings before the Committee on Commerce were also concerned primarily with the ship purchase and lease provisions, as were the floor debates. Once again, the Committee report set forth the recommendations arising out of the 1914 investigation. S. Rep. No. 689, 64th Cong., 1st Sess. 7-11. With no relevant amendment to the regulatory portions of the bill, H. R. 15455 passed the Senate and became law in September of 1916. 39 Stat. 728.

As enacted, then, the statute provided for the following scheme of regulation. Carriers subject to the Act must file with the Board copies of agreements establishing (*inter alia*) preferential or cooperative arrangements. Such of these as the Board finds "to be unjustly discriminatory or unfair . . . or to operate to the detriment of the commerce of the United States, or to be in violation of this Act," it may disapprove, cancel or modify; all others it must approve, and those approved are exempt from the antitrust laws (§ 15). As to any "rate, fare, charge, classification, tariff, regulation, or practice" of carriers that the Board finds to be unjust or unreasonable, it may take corrective measures (§ 18). As an exception to, or qualification upon, this scheme, certain practices were specifically outlawed and may not, therefore, be approved by the Board: to allow deferred rebates, use fighting ships,

" . . . Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or

unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason,”

and treat or contract with shippers in certain unfair or unjustly discriminatory ways; violation of this provision is a misdemeanor punishable by a fine of up to \$25,000 (§ 14).⁶

The form that this regulation takes, considered in light of its legislative background, makes clear the congressional purpose. It was found that abuses and discriminations were inherent in the international shipping trade when it was conducted on the basis of cooperation among competitors. It was further found that the alternative to cooperation was cut-throat competition leading to monopoly and, more particularly, working to the serious detriment of American carriers and shippers and to the advantage of their foreign competitors. The conclusion was that the system of cooperation must be domesticated and exposed to, and policed by, a continuing process of regulation. Only the flagrant abuses were flatly prohibited. The pervading purpose of the Shipping Act is to be found in a statement made in the House debate by Representative Burke, a majority member of the Alex-

⁶ It is worth noting that in §§ 14, Fourth, and 15 the statute speaks in terms of “unjust” discrimination, a standard to which it was quite clearly the legislative purpose for the Board to give substance and meaning. Congress had no intention of condemning all of the practices described by the very general language of the two provisions; it relied on the Board to prevent only those that are unwarranted by the competitive situation in which they are found. But in § 14, Third, no such qualification was adopted, for the kind of “discriminating and unfair methods” toward which Congress was directing its attention had been clearly identified (*i. e.*, by retaliation against shippers), and they were to be flatly prohibited irrespective of the circumstances in which they might be practiced.

ander Committee during both the investigation and the consideration of the various bills:

"Your committee at the conclusion of such hearings and after consideration and due deliberation made its report to Congress upon the subject with many valuable recommendations. Among the recommendations made in such report to Congress were that laws should be passed prohibiting the grossest and most vicious of such unfair practices

.

"It was found by your committee that many of the unfair practices had become so firmly established and contained in many instances elements of usefulness that, with the exception of some of the more prominent ill practices, it was considered that a system of regulation and control of water transportation would be for the best interest of both the public and those interested in water transportation." 53 Cong. Rec. 8095.

It is important to keep in mind the relation of this scheme of regulation to the antitrust laws. Prior to the enactment of the Shipping Act, the ocean transportation industry was, of course, subject to the antitrust laws, and, indeed, as has been noted, proceedings under the Sherman Act had been brought against several conferences by the Government. Congress might have provided that, in addition to being subjected to the general surveillance involved in a comprehensive pattern of regulation, the steamship owners must continue to conform to the affirmative policy in favor of a high level of competition that underlies the antitrust laws. Such was the condition in which legislation had placed the railroads. They were subject to both Interstate Commerce Commission regulation and the outlawry of the Sherman Act. *United*

States v. Trans-Missouri Freight Assn., 166 U. S. 290; *United States v. Joint Traffic Assn.*, 171 U. S. 505. Not until 1920 were agreements among rail carriers excepted from the antitrust laws. § 407, Transportation Act of 1920, 41 Stat. 456, 480, amending § 5 of the Interstate Commerce Act, 24 Stat. 379, 380. With respect to ocean transportation, however, Congress from the beginning chose to exempt agreements among carriers and between carriers and shippers from the antitrust laws. They thus rejected court-determined competition and preferred to rely upon regulation under an expert administrative agency.

It is in the light of this background that we must consider § 14, Third, of the Shipping Act of 1916, which both the Court of Appeals and this Court have construed as prohibiting the dual-rate contract system. The section imposes a heavy fine for conduct it makes criminal and so should be strictly construed. See *Yates v. United States*, 354 U. S. 298, 304–305. It deserves narrow construction also on the ground that it is an undoubted exception to a comprehensive and complex scheme of regulation by the Board. For it must be construed not as though it were an isolated piece of writing but as part of a reticulated scheme of government for the shipping industry. No form of conduct should be brought within its terms that was not designed to be included. As the foregoing survey of the legislative history demonstrates, there is no evidence of such purpose with respect to the dual-rate contract system. The evidence in fact points to the intention of its exclusion.

Under no fairly applicable meaning of the word “retaliation” can the conclusion of the Court of Appeals, that the initiation and maintenance of a dual-rate contract system is retaliation, be sustained. It is clear from the congressional history that the framers of the legislation were concerned with certain forms of conduct, notably refusal of available accommodations, directed against

shippers because they had previously done such things as shipping by an independent line or publicly filing complaints against carriers. The very concept of retaliation is that the retaliating party takes action against the party retaliated against after, and because of, some action of the latter. In the dual-rate contract system, there is nothing of this "getting even"; the parties simply enter into an agreement that is designed to guide their future conduct but in no way depends upon or arises out of past conduct. It does violence to the English language—and certainly to the duty of reading congressional language in context—to characterize such a contractual arrangement as "retaliation." As conduct relating to the competitive struggle between carriers combined in a conference and those who prefer to stay out—yes; as an act of reprisal—no.

But if the dual-rate contract system is not "retaliation," then it does not violate § 14, Third, for it seems evident that that section was directed only at retaliation. It is, indeed, rather inartfully drawn, but under the circumstances, and particularly in light of the legislative background, its ambiguities should be resolved in favor of the narrower construction. The recommendation of the Alexander Committee, *supra*, a body on which Congress placed an extraordinarily high degree of reliance with respect to the regulatory aspects of the Shipping Bill, contemplated nothing but "retaliation." When, four months later, the recommendation had been put into the language of proposed legislation, it took substantially the form it takes in the statute as enacted. No doubt, the intention to limit the application of the provision to "retaliation" is not so clear in the statutory language as it was in the recommendation; however, since there is no evidence of purposefulness in this change, and no apparent reason for it, the alteration in language should not be regarded as having effected a decisive change in the substance of

the provision. Attaching such drastic significance to this change in wording has no supporting reason and is contradicted by the underlying philosophy of the legislation. This conclusion is emphasized by the fact that after the change the Committee Reports in both Houses of Congress quoted the language of the recommendation in support of the proposed legislation without qualification. And in the House debate, when Representative Alexander was briefly summarizing the provisions of the bill, he said, in describing the provision that became § 14, Third, nothing more than that it “forbids retaliation against shippers who patronize other carriers, or complain of unfair treatment by refusing, or threatening to refuse, space accommodations when available, or by other unfair practices” 53 Cong. Rec. 8080. Surely, when there is nothing in the legislative history to suggest that Congress wished to prohibit the dual-rate contract system of which they were fully aware, and everything to suggest that § 14, Third, was designed to respond solely to an entirely different problem, that section cannot be stretched to embrace that practice and thereby to undercut the rationale of the legislation.

The Court’s construction makes of the latter portions of § 14, Third, a general catch-all. The relevant words, as abstracted from the entire provision, would be these: “no common carrier by water shall directly or indirectly . . . resort to . . . discriminating or unfair methods . . . for any . . . reason.” Such a provision—even if it be limited to conduct designed to “stifle” competition—would not only make the remainder of § 14 redundant but would be inconsistent with the whole philosophy, not to say the language, of much of the regulatory portion of the Shipping Act. There is nothing in the words of the statute or in its congressional background to indicate that Congress intended to bury such a broad prohibition in the third portion of a four-part penal section. Moreover, as noted above, the most probable

explanation for the generality of the language in § 14, Third, is that Congress sought to cover forms of retaliation that shippers had been afraid to bring to the legislators' attention.

Nor is there any merit to the suggestion that if Congress made "deferred rebates" unlawful, the practice of dual-rate contracts—although not specifically prohibited—should also be unlawful because it has "the same objectionable purpose and effect." This mode of approach is a judicial utilization of the salesmanship that offers something as "just as good." This Court certainly has not the power to say that conduct is unlawful simply because it is "just as bad" as some conduct that Congress has specifically prohibited. The principal basis that the Alexander Committee set forth for its conclusion that deferred rebates were objectionable was precisely that the rebates were deferred. The Committee, in outlining the objections that had been made to steamship agreements, noted that "[b]y deferring the payment of the rebate until three or six months following the period to which the rebate applies ship owners effectively tie the merchants to a group of lines for successive periods." Report, *supra*, at 307. The Committee recited the contention that "the ordinary contract system does not place the shipper in the position of continual dependence that results from the deferred rebate system" (*ibid.*); it is not unlikely that they had in mind the dual-rate contract system. This Court in *Swayne & Hoyt, Ltd., v. United States*, 300 U. S. 297, adopted that point of view when it said (300 U. S., at 307, n. 3): "The Committee recognized that the exclusive contract system does not necessarily tie up the shipper as completely as 'deferred rebates,' since it does not place him in 'continual dependence' on the carrier by forcing his exclusive patronage for one contract period under threats of forfeit of differentials accumulated during a previous contract period."

Twice this Court has rejected the contention that it now accepts. Twice this Court has held that the Shipping Act of 1916 did not render illegal *per se* a dual-rate contract system enforced by a combination of steamship carriers essentially like the one now before the Court, whereby lower rates are tied to an agreement for exclusive carriage. Such were the decisions, upon full consideration, in *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, in 1932 and again in *Far East Conference v. United States*, 342 U. S. 570, in 1952 by a wholly differently constituted Court. In both these cases the claim was that such a dual-rate system constituted a combination in violation of the Sherman Act, for which relief by way of an injunction could be had by a competing carrier outside the conference, as in the *Cunard* case, and by the United States, as in the *Far East Conference* case, under § 4 of the Sherman Act. The immediate issue in both cases was, of course, the applicability of the principle of "primary jurisdiction"—that is, whether the legality of a dual-rate system could be adjudicated by a United States District Court without a determination by the Federal Maritime Board as to whether "the matters complained of" (*United States Navigation Co. v. Cunard S. S. Co.*, *supra*, at 478) and whether the dual-rate system "on the merits" (*Far East Conference v. United States*, *supra*, at 573) offend the Shipping Act of 1916. The doctrine of "primary jurisdiction" was recognized by Mr. Chief Justice Taft as an achievement whereby its author, Mr. Chief Justice White, "had more to do with placing this vital part of our practical government on a useful basis than any other judge." (257 U. S. xxv.) The Court's opinion makes of it an empty ritual.

By virtue of these two decisions, an independent shipowner who claimed to be hurt by the operation of a dual-rate contract system, employed as a competitive measure

against him by a shipping conference, could not bring his complaint to court as might a manufacturer hurt by an analogous combination competitor. Such a shipowner would have to appeal to the Federal Maritime Board, as did Isbrandtsen. The ensuing Board proceedings would probably be similar to those in this case. On Isbrandtsen's protests, filed January 12, 1953, and amended on January 19, hearings were conducted before a Board Examiner from October 5 to December 23, 1953, in which was compiled a record of over 4,500 pages of testimony and over 150 exhibits. The examiner rendered his recommended decision on September 13, 1954, but on October 6 the Board remanded the record for supplemental findings of fact; these supplemental findings were served on January 17, 1955. Eleven months later the Board filed its detailed, comprehensive report approving the conference's dual-rate system (as amended in accordance with the Board's report) as not unjustly discriminatory or unfair, nor likely to operate to the detriment of the commerce of the United States, nor in violation of the Shipping Act. But all this elaborate process and determination are legally meaningless. The agency is made to serve as a circumlocution office. The sole function of this carnival of procedural emptiness is that of a formal preliminary to a suit in a federal court. For such a suit, the Court now holds, is to proceed in complete disregard of all the hearing, weighing and interpreting of evidence before the Board. The Court is to make a ruling of law with entire indifference to all the findings of the expert body set up to make appropriate findings on the basis of the law's policy. Surely it is a form of playfulness to make resort to the Board a prerequisite when the judicial determination of law could have been made precisely as though there had been no proceeding before the Board. This is to make a mockery of the doctrine of primary

jurisdiction and to interpret the decisions in the *Cunard* and *Far East Conference* cases as utterly wasteful futilities.

Until today the doctrine of "primary jurisdiction" was not an empty ritual. Its observance in scores of cases was not a wasteful futility. In denying to the District Courts jurisdiction in situations like those in the *Cunard* and *Far East Conference* cases the doctrine of primary jurisdiction was not devised for the purposeless delay of giving the same jurisdiction to Courts of Appeals, on condition that they use the administrative agency as a sterile conduit to them. Such a view would denigrate and distort the significance of one of the most important movements in our law. Legal scholars have rightly compared it to the rise of equity, a view endorsed by this Court through Mr. Chief Justice Stone, himself a scholar. See *United States v. Morgan*, 307 U. S. 183, 191. The utilization of these administrative agencies is a legislative realization, judicially respected, that the regulatory needs of modern society demand law-enforcing tribunals other than the conventional courts. The doctrine of primary jurisdiction, based as it is on the discharge of functions for which courts normally have neither training and experience nor procedural freedoms, is an essential aspect of this modern administrative law. It is a means of achieving the proper distribution of the law-enforcing roles as between administrative agencies and courts. It gives these agencies the necessary scope for exploring a wide realm of facts, not to be confined within the exclusionary rules of evidence controlling proceedings in courts, to weigh such facts with an expert's understanding and to choose between allowable inferences where wise choice so often depends on informed judgment.⁷ These agencies

⁷ "[The] differences in origin and function [between court and agency] preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience

do not supplant courts. They are subject to what may broadly be called the judicial Rule of Law. Appeal lies to courts to test whether an agency acted within its statutory bounds, on the basis of rational evidence supporting a reasoned conclusion, and ultimately satisfies the constitutional requirement of due process. Within these limits, a large range of discretion is entrusted to administrative agencies to make effective the social and economic policies adopted by Congress in the myriad concrete situations calling for their application. Whether rates are reasonable, whether discriminations are fair, whether particular combined economic arrangements are justified, whether practices that would, for industry generally, fall afoul the Sherman Act are permissible under a legislative regime for a particular industry that to that extent supersedes the antitrust laws—these and like questions come within the operation of the doctrine of primary jurisdic-

of courts. Thus, this Court has recognized that bodies like the Interstate Commerce Commission, into whose mould Congress has cast more recent administrative agencies, 'should not be too narrowly constrained by technical rules as to the admissibility of proof,' *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties. Compare *New England Divisions Case*, 261 U. S. 184. To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play. They require that interested parties be afforded an opportunity for hearing and that judgment must express a reasoned conclusion. But to assimilate the relation of these administrative bodies and the courts to the relationship between lower and upper courts is to disregard the origin and purposes of the movement for administrative regulation and at the same time to disregard the traditional scope, however far-reaching, of the judicial process. Unless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U. S. 134, 143-144.

tion, and it limits the power of courts to pass on their merits.

Contrariwise, where a decision of a case depends on determination of a question of law as such, either because of explicit statutory outlawry of some specific conduct or by necessary implication of judicial power because not involving the exercise of administrative discretion or the need of uniform application of specialized competence, the doctrine of primary jurisdiction has no function, because there is no occasion to refer a matter to the administrative agency. *Great Northern R. Co. v. Merchants Elevator Co.*, 259 U. S. 285 (reaffirmed in *United States v. Western Pacific R. Co.*, 352 U. S. 59, 69); *Texas & Pacific R. Co. v. Gulf, C. & S. F. R. Co.*, 270 U. S. 266; *Civil Aeronautics Board v. Modern Air Transport, Inc.*, 179 F. 2d 622, 624-625; see Davis, Administrative Law, 666-668. The course of decisions was accurately summarized in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 254: ". . . we know of no case where the Court has ordered reference of an issue which the administrative body would not itself have jurisdiction to determine in a proceeding for that purpose." It would be a travesty of law and an abuse of the judicial process to force litigants to undergo an expensive and merely delaying administrative proceeding when the case must eventually be decided on a controlling legal issue wholly unrelated to determinations for the ascertainment of which the proceeding was sent to the agency. Such, however, is the result in this case.

The *Cunard* and *Far East Conference* decisions mean nothing if they do not mean that the denial of jurisdiction to the District Courts to entertain the suits in those cases and their reference to the Federal Maritime Board, and the holding that the complaints against the dual-rate system in those two cases must be passed on by the Board, constituted the plainest possible recognition that it was

for the Board to approve or disapprove the dual-rate contract system complained of, and, therefore, that the practice was not illegal as a matter of law—that is, by virtue of a statutory condemnation. In both cases the Court's attention was directed to the claim of *per se* illegality. In both cases the plaintiffs urged that, since the dual-rate contract system violated § 14, the Board was without power to approve it. Brief for Petitioner, pp. 47–56, *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474; Brief for United States, pp. 22–23 (incorporating by reference Brief for United States, pp. 21–45, *A/S J. Ludwig Mowinckels Rederi v. Isbrandtsen Co.*, 342 U. S. 950); *Far East Conference v. United States*, 342 U. S. 570; see also *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, 478 (argument of petitioner's counsel). And in *Far East Conference*, the claim that now prevails was a main ground of dissent. See 342 U. S., at 578–579.⁸ When an issue is squarely and

⁸ The Court in the *Cunard* case discussed the claim in the following terms:

“It is said that the agreement referred to in the bill of complaint cannot legally be approved. But this is by means clear. . . . [W]hatever may be the form of the agreement, and whether it be lawful or unlawful upon its face, Congress undoubtedly intended that the board should possess the authority primarily to hear and adjudge the matter. For the courts to take jurisdiction in advance of such hearing and determination would be to usurp that authority. Moreover, having regard to the peculiar nature of ocean traffic, it is not impossible that, although an agreement be apparently bad on its face, it properly might, upon a full consideration of all the attending circumstances, be approved or allowed to stand with modifications.” 284 U. S., at 487.

It may be noted that, after this Court ordered the dismissal of the complaints in the *Cunard* and *Far East Conference* cases, the complaining party in neither case initiated proceedings before the Board concerning the dual-rate system involved. The Government has, however, intervened in Board proceedings involving the systems of other conferences, as it did in the instant case.

fully presented to the Court and its disposition is essential to the result reached in a case, the issue is decided whether the Court says much or little, whether the opinion is didactic or elliptical. Otherwise very few opinions in which Mr. Justice Holmes spoke for the Court, in most instances tersely and often cryptically, would have formulated decisions.

Nor can these cases be distinguished on their facts. The complaints in both cases alleged that the conferences had initiated the dual-rate contract system in order to eliminate competition. See *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, 479–480; Transcript of Record, p. 6, *Far East Conference v. United States*, 342 U. S. 570. And the dual-rate agreement involved in *Far East Conference* was, if anything, more coercive and more closely analogous to a system of deferred rebates than is the one involved in the cases before the Court. It provided (§ 4) that if a shipper violated the agreement, the agreement was void, and the shipper became liable to pay “additional freight on all commodities theretofore shipped with such carriers for a period not exceeding twelve months immediately preceding the date of such shipment, at the non-contract rate or rates” *Id.*, at 18. Such an accumulation of potential liability was much more likely to result in “continual dependence” on the conference than is the liquidated damages provision in the agreement before us. The latter provides for damages of 50 percent of the freight that would have been paid under the agreement (*i. e.*, at the lower, or contract rate) for the shipment made in violation of the agreement; the agreement does not become void on account of a single violation. There is no basis for concluding that these damages are unreasonably high or that they do not bear a rational relation to the actual loss a carrier sustains when he is denied a shipment to which his contract entitles him.

Since this Court has twice rejected the theory that dual-rate contract systems violate § 14 of the Shipping Act, and since there is nothing in that statute or its legislative history to suggest that those cases were wrongly decided in the light of new knowledge not before the Court when they were decided, the question in this case is, as it was in the earlier two cases, one lying within the Board's administrative discretion. As I see no reason for overturning the detailed, well-reasoned report of the Board in these proceedings, I am of opinion that the decision of the Court of Appeals should be reversed.

SUPREME COURT OF THE UNITED STATES

Nos. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,

73 v.

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74 v.

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certio-
rari to the United
States Court of
Appeals for the
District of Co-
lumbia Circuit.

[May 19, 1958.]

MR. JUSTICE HARLAN, dissenting.

Except in one respect, I agree with the dissenting opinion of MR. JUSTICE FRANKFURTER. I do not think that this Court's decisions in *United States Navigation Co. v. Cunard Steamship Co.*, 284 U. S. 474, and *Far East Conference v. United States*, 342 U. S. 570, have the effect which that opinion attributes to them. Despite the logic of the argument flowing from the doctrine of primary jurisdiction, and the lack of any substantial factual distinction between the agreements in those cases and in this one, I am unable to read *Cunard* and *Far East Conference* as having determined, without any discussion, the far-reaching question which has been decided today. See especially *Cunard*, 284 U. S., at 483-484, 487.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SHIPPING ACT, 1916

(39 Stat. 728, Chapter 451, Approved Sept. 7, 1916)

* * * * *

SEC. 14. That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense. *"Provided, That nothing in this section, or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual-rate contract arrangement in use by the members of a conference on*

the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in Section 15 of this Act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.



Calendar No. 1743

85TH CONGRESS
2D SESSION

S. 3916

[Report No. 1709]

IN THE SENATE OF THE UNITED STATES

MAY 28, 1958

Mr. MAGNUSON (by request) introduced the following bill; which was read twice and referred to the Committee on Interstate and Foreign Commerce

JUNE 13, 1958

Reported by Mr. MAGNUSON, with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Shipping Act, 1916.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14 of the Shipping Act, 1916, is amended by
4 inserting at the end thereof the following: "*Provided, That*
5 *nothing in this section, or elsewhere in this Act, shall be*
6 *construed or applied to forbid or make unlawful any dual-*
7 *rate contract arrangement in use by the members of a*
8 *conference on the effective date of this amendment, which*
9 *conference is organized under an agreement approved under*
10 section 15 of this Act by the regulatory body administering
11 ~~this Act~~ *this Act, unless and until such regulatory body dis-*

1 *approves, cancels, or modifies such arrangement in accordance*
2 *with the standards set forth in section 15 of this Act. The*
3 *term 'dual rate contract arrangement' as used herein means*
4 *a practice whereby a conference establishes tariffs of rates*
5 *at two levels, the lower of which will be charged to mer-*
6 *chants who agree to ship their cargoes on vessels of members*
7 *of the conference only and the higher of which shall be*
8 *charged to merchants who do not so agree."*

9 SEC. 2. This Act shall be effective immediately upon
10 enactment and shall cease to be effective on and after June
11 30, 1960.

86TH CONGRESS
2d Session

S. 3916

[Report No. 1709]

A BILL

To amend the Shipping Act, 1916.

By Mr. MAGNUSON

MAY 28, 1958

Read twice and referred to the Committee on
Interstate and Foreign Commerce

JUNE 13, 1958

Reported with an amendment

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 24, 1956
For actions of June 23, 1958
85th-2d, No. 103

CONTENTS

Appropriations.....1		
Atomic energy.....6		
Buildings.....26		
Cheese.....5		
Conservation.....46		
Cotton.....11,37		
Dairy program.....10,38		
Defense production.....12	Livestock loans.....13	Small business.....30
Electrification.....9,41	Minerals.....28,44	Statehood.....21,42
Employment.....46	Monopolies.....20	Surplus food.....16,43
Extension.....34	Natural resources.....15,46	Taxation.....3,8
Farmer committees.....25	Onion futures.....24	Technical assistance.....2
Food stamps.....43	Price support.....11	Textiles.....27
Foreign aid.....2,36	Property.....4,18	Tobacco.....14
Foreign trade.....33	Public Law 480.....2,40	Trade agreements.....33
Humane slaughter.....32	Reclamation.....35,39	Transportation...3,8,19,29
Information.....22	Reorganization.....31	Watersheds.....7,23
Inspection services.....17	Science.....2	Wildlife.....45

HIGHLIGHTS: House received President's appropriation request to cover increased pay costs. Senate passed bills to: Fix price support on extra-long staple cotton at 60 to 75% of parity. Extend Defense Production Act. Extend special livestock loan authority. Reduce allotments for 2d crop of tobacco grown on allotment in 1 year. Allow interchange of inspection services by executive agencies. Sen. [Name] urged a self-help direct payments plan to aid dairy farmers. (Con't on p.5)

HOUSE

1. APPROPRIATIONS. Received from the President a proposed indefinite appropriation and draft of proposed provisions pertaining to increased pay costs for the fiscal year 1958 (H. Doc. 409); to Appropriations Committee. p. 10844
The Appropriations Committee reported on June 19, without amendment H. R. 13066, the legislative branch appropriation bill for 1959 (H. Rept. 1940). p. 10845
2. FOREIGN AID. Received the conference report on H. R. 12181, the mutual security authorization bill (H. Rept. 1941). The conferees agreed to an authorization of \$3,031,400,000; to provide that the U. S. contribution to the U. N. technical assistance and related programs for 1959 may not exceed 40 percent of the total amount contributed to the programs; to authorize a study, under the direction of the President, by certain Government agencies of the relation of the program to American private enterprise and the American economy, and to make recommendation to prevent any possible adverse effects, with special reference to areas of substantial labor surplus, and to further the role of American private enterprise in promoting our foreign policy; and to authorize the use of

Public Law 480 currencies to collect, collate, translate, abstract, and disseminate scientific and technological information, and to conduct and support scientific cooperation between the U. S. and other countries, including coordinated research against disease. With regard to the use of these Public Law 480 funds the conference report states that "the provision does not in itself make funds available to any agency of the United States. It authorizes the use of Public Law 480 currencies for the purposes stated but leaves to the President the question as to which executive agency will administer the program." pp. 10835-844

Rep. Moulder spoke in opposition to extending the mutual security program. p. 10833

Received from the State Department a letter relative to the establishment of a loan not to exceed \$12 million from the Development Loan Fund for Greece. p. 10844

3. **TRANSPORTATION.** The Merchant Marine and Fisheries Committee ordered reported H. R. 12751, to extend the provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. p. D580

Several Representatives urged adoption of a Senate amendment to H. R. 12695, the excise-tax rate extension bill, which would repeal the tax on transportation. pp. 10814, 10820, 10828, 10830-31

4. **PROPERTY.** A subcommittee of the Government Operations Committee ordered reported H. R. 12165, to extend for 2 years the period for which payments in lieu of taxes may be made on certain real property transferred by RFC to other Government agencies. p. D579

5. **CHEESE.** Rep. Reuss criticized certain purchase-sale transactions in cheese and butter by CCC as being "illegal paper transactions," and inserted his letter to the Secretary and other material on the matter. pp. 10833-35

6. **ATOMIC ENERGY.** Both Houses received from the President for approval an international agreement between the U. S. and the European Atomic Energy Community for mutual cooperation in the peaceful application of atomic energy (H. Doc. 411). pp. 10813-814, 10747

7. **WATERSHEDS.** Received and referred to the Appropriations Committee a letter from the Agriculture Committee approving works of improvement for the Antelope Creek Watershed, Nebr., the Bear, Fall, and Coon Creeks Watersheds, Okla., and the Auds Creek Watershed, Tex. p. 10811

8. **TAXATION.** Conferees were appointed on H. R. 12695, to extend for 1 year the corporate normal-tax rate and certain excise-tax rates, and to repeal the taxes on transportation. Senate conferees were appointed June 20. p. 10813

9. **ELECTRIFICATION.** Received from the Federal Power Commission two new publications, "Electric Power Requirements and Supply of the United States, by Regions, Present and Future to 1958," and "Hydroelectric Plant Construction Cost and Annual Production Expenses, 1953-56." p. 10845

SENATE

10. **DAIRY PROGRAM.** Sen. Proxmire urged support for a direct payment self-help dairy stabilization program such as that included in the House omnibus farm bill, and criticized the present dairy situation. He inserted statistics on dairy prices and testimony presented before the Senate Agriculture and Forestry Committee. pp. 10784-6

June 33, 1958

11. COTTON. Passed without amendment H. R. 11399, to authorize the Secretary to set the levels of price support for extra long-staple cotton at between 60 to 75 percent of parity. This bill will now be sent to the President. p. 10765
12. DEFENSE PRODUCTION. Passed without amendment H. R. 10969 (in place of a similar bill S. 3323), to extend the Defense Production Act for 2 years until June 30, 1960. This bill will now be sent to the President. pp. 10773-4
13. LIVESTOCK LOANS. Passed as reported H. R. 11424, to extend for 2 years, through July 14, 1961, the authority of the Secretary to extend or make supplementary advances to borrowers for special livestock loans. p. 10780
14. TOBACCO. Passed without amendment H. R. 11058, to reduce the acreage allotments of tobacco farmers who harvest more than one crop of tobacco in a year from the same acreage. This bill will now be sent to the President. p. 10780
15. NATURAL RESOURCES. Passed as reported S. 2517, to authorize the States to choose mineral lands in making selections in lieu of sections of public lands occupied before State claims were made. pp. 10781-3
16. SURPLUS FOODS. Passed without amendment H. R. 12164, to permit the donation of surplus foods to nonprofit summer camps for children without regard to the number of needy children actually enrolled. This bill will now be sent to the President. p. 10780
17. INSPECTION SERVICES. Passed without amendment S. 3873, to authorize the interchange of inspection services between executive agencies without reimbursement or transfer of funds. p. 10769
18. PROPERTY. Passed as reported S. 3142, to authorize the lease of Federal building sites until needed for actual construction. p. 10769
19. TRANSPORTATION. Passed as reported S. Res 303, to provide for a study of transportation policies in the United States by the Interstate and Foreign Commerce Committee, including the exemption provisions in the laws regulating transportation. p. 10773
20. MONOPOLIES. The Judiciary Committee ordered reported with amendment S. 11, to amend the Robinson-Patman Act to make price discrimination prima facie proof of violation of the law. p. D578
21. STATEHOOD. Began debate on H. R. 7999, to admit Alaska as a State. pp. 10766, 10786, 10803, 10804, 10804-10.
22. INFORMATION. At the request of Sen. Talmadge, passed over S. 921, to restrict the right of Federal officers to withhold information or records. p. 10765.
23. WATERSHEDS. At the request of Sen. Hruska, passed over H. R. 5497, to authorize Federal assistance for certain fish and wildlife development projects under the Watershed Protection and Flood Prevention Act. p. 10765
24. ONION FUTURES. At the request of Sen. Hruska, passed over H. R. 376, to prohibit trading in onion futures on commodity exchanges. p. 10765

25. FARMER COMMITTEES. At the request of Sen. Talmadge, passed over S. 1436, to amend various provisions of law regarding ASC committees, to provide for the administration of the farm program by farmer elected committees, etc. p. 10766
26. BUILDINGS. At the request of Sen. Hruska, passed over S. 3560, to authorize construction of a \$20 million Federal building in Memphis, Tenn. p. 10766
27. TEXTILES. At the request of Sen. Talmadge, passed over H. R. 469, to protect producers and consumers against misbranding and false advertising of the fiber content of textile fiber products. pp. 10766-7
28. MINERALS. At the request of Sen. Mansfield, passed over S. 3817, to encourage exploration for minerals with Federal aid. p. 10769
29. TRANSPORTATION. At the request of Sens. Talmadge and Hruska, passed over S. 3916, to extend for two years provisions of the Shipping Act of 1916 to allow continuation of existing dual-rate contract agreements. p. 10774
30. SMALL BUSINESS. At the request of Sen. Clark, passed over H. R. 7963, to extend the Small Business Act of 1953, and increase the SBA loan authority. p. 10775
31. REORGANIZATION. At the request of Sen. Talmadge, passed over S. Res. 297, to disapprove Reorganization Plan No. 1 of 1958, to merge the Office of Defense Mobilization and the Federal Civil Defense Administration. p. 10776
Sen. Potter commended the adverse report of the Government Operations Committee on S. Res. 297, and the evaluation of the proposed merger. p. 10802
32. HUMANE SLAUGHTER. At the request of Sen. Talmadge, passed over H. R. 8308, to require the use of humane methods in the slaughter of livestock and poultry. p. 10780
33. FOREIGN TRADE. Sen. Thurmond submitted amendments to H. R. 12591, the trade agreements extension bill, proposing to limit the extension to 2 years and to require Congressional assent to Presidential action reversing findings of the Tariff Commission. p. 10804
34. EXTENSION. Sen. Johnston inserted an editorial on the death of Dr. F. Franklin Poole, President of Clemson College, S. C. pp. 10783-4
35. RECLAMATION. Received from the Interior Department a report that the Bountiful, Utah, Water Subconservancy District, had applied for a loan of \$3,510,000, under the Small Reclamation Projects Act. p. 10747

ITEMS IN APPENDIX

36. FOREIGN AID. Rep. Green inserted an article, "Over \$63 Million in Foreign Aid Shared by Eight Oregon Communities." pp. A5696-7
37. COTTON. Extension of remarks of Sen. Sparkman urging aid for cotton farmers and inserting an article, "Cotton's Decline, Long Foreseen, Still Pains Many Dixie Farmers--Some Quit, Wind Up On City Relief Rolls; Others Find Pinch Profits Harder." pp. A5697-8
38. DAIRY INDUSTRY. Extension of remarks of Sen. Proxmire inserting 2 Grange organization resolutions in support of his bill, S. 2952. p. A5698

Narrows Dam, was considered, ordered to a third reading, read the third time, and passed.

CONSTRUCTION OF BRIDGE ACROSS MISSISSIPPI RIVER AT FRIAR POINT, MISS., AND HELENA, ARK.

The bill (H. R. 5033) to extend the time for commencing and completing the construction of a bridge across the Mississippi River at or near Friar Point, Miss., and Helena, Ark., was considered, ordered to a third reading, read the third time, and passed.

J. PERCY PRIEST DAM AND RESERVOIR

The bill (H. R. 12052) to designate the dam and reservoir to be constructed at Stewarts Ferry, Tenn., as the J. Percy Priest Dam and Reservoir was considered, ordered to a third reading, read the third time, and passed.

NETTIE L. RICHARD AND OTHERS

The Senate proceeded to consider the bill (S. 3053) for the relief of Nettie L. Richard, Florence L. Morris, Tessie L. Marx, and Helen L. Levi, which had been reported from the Committee on Public Works, with an amendment, on page 1, line 3, after the word "convey", to insert "subject to exceptions, restrictions, and reservations including a reservation to the United States of flowage rights) as he determines are in the public interest", so as to make the bill read:

Be it enacted, etc., That the Secretary of the Army shall convey subject to exceptions, restrictions, and reservations (including a reservation to the United States of flowage rights) as he determines are in the public interest, all right, title, and interest of the United States in and to the two parcels of real property described in section 2 of this act, for a consideration of \$27,120, to the following four individuals, as tenants in common: (1) Nettie L. Richard, Demopolis, Ala., (2) Florence L. Morris, Demopolis, Ala., (3) Tessie L. Marx, New Orleans, La., and (4) Helen L. Levi, Evansville, Ind.

SEC. 2. The two parcels of real property referred to in the first section of this act are more particularly described as follows:

(1) A tract of land being the east half of the east half of the northwest quarter of the southeast quarter and the north half of the west quarter of the northeast quarter of the southeast quarter of section 17, township 18 north, range 2 east, Saint Stephens meridian, Sumter County, Ala., containing 15 acres, more or less, known as tract numbered A-194.

(2) A tract of land lying approximately in the west half of section 27, and west half of section 34 lying northeast of the Tombigbee River, and that part of northeast quarter of section 33 lying northeast of the Tombigbee River, in township 19 north, range 2 east, Saint Stephens meridian, Greene County, Ala., containing 525 acres, more or less, and known as tract No. B-224.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so to read: "A bill to authorize the Secretary of the Army to convey certain real property at Demopolis lock and dam project, Alabama, to the heirs of the former owner."

STUDY OF TRANSPORTATION POLICIES IN THE UNITED STATES

The Senate proceeded to consider the resolution (S. Res. 303) providing for a study of transportation policies in the United States, which had been reported from the Committee on Interstate and Foreign Commerce with amendments, and subsequently reported from the Committee on Rules and Administration without additional amendment.

The amendments of the Committee on Interstate and Foreign Commerce are: On page 2, after line 19, to insert:

6. the problems arising from action by the Interstate Commerce Commission in permitting the charge of more for a short than a long transportation haul over the same line in the same direction; and."

At the beginning of line 24, to strike out "6. the relationship between" and insert "7. additional matters of", and on page 3, line 18, after the word "exceed", to insert "\$100,000"; so as to make the resolution read:

Resolved, That the Committee on Interstate and Foreign Commerce, or any duly authorized subcommittee thereof, is authorized under sections 134 (a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to—

1. the need for regulation of transportation under present-day conditions and, if there is need for regulation, the type and character of that regulation;

2. the area of Federal policy dealing with Government assistance provided the various forms of transportation and the desirability of a system of user charges to be assessed against those using such facilities;

3. the subject of the ownership of one form of transportation by another;

4. Federal policy on the subject of consolidations and mergers in the transportation industry;

5. policy considerations for the kind and amount of railroad passenger service necessary to serve the public and provide for the national defense;

6. the problems arising from action by the Interstate Commerce Commission in permitting the charge of more for a short than a long transportation haul over the same line in the same direction; and

7. additional matters of Federal regulation (and exemption therefrom) and Federal promotional policy in regard to the various forms of transportation.

SEC. 2. For the purposes of this resolution the committee, from the date this resolution is agreed to, to January 31, 1959, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ on a temporary basis, technical, clerical, and other assistants and consultants; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1959.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed \$100,000 shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

MONTICELLO DAM, CALIF.

The bill (H. R. 9382) to designate the main dam of the Solano project in California as Monticello Dam was considered, ordered to a third reading, read the third time, and passed.

LAKE SOLANO, CALIF.

The bill (H. R. 9381) to designate the lake above the diversion dam of the Solano project in California as Lake Solano was considered, ordered to a third reading, read the third time, and passed.

EXTENSION OF DEFENSE PRODUCTION ACT OF 1950

The bill (S. 3323) to extend the Defense Production Act of 1950, as amended, was announced as next in order.

Mr. HRUSKA. Mr. President, may we have an explanation of the bill?

Mr. CLARK. Mr. President, this bill would extend the Defense Production Act, which otherwise would expire on June 30, 1958.

There are only 3 titles of the Defense Production Act still having the force of law.

The first has to do with priorities and allocations. They are designed to insure prompt performance of procurement contracts let by the Department of Defense and the Atomic Energy Commission through the use of preference ratings for orders.

Title III of the act provides financial devices to increase productive capacity and supply, and contains a number of detailed sections looking to that end.

Title 7 of the act contains a number of administrative provisions, the most important of which deals with the authority for voluntary agreements providing for antitrust immunity and for the use w. o. c.'s and the new executive reserve, with exemptions from the conflict-of-interest statutes. The w. o. c. program is growing smaller, according to reports received each quarter from the Chairman of the Civil Service Commission, while the executive reserve program has increased substantially.

The 2-year extension of the act was recommended by the President in his budget message, by the Director of the Office of Defense Mobilization, and by all the departments and agencies concerned. No opposition to the extension was made known to the committee.

Prompt action on the bill is desirable. The industries and financial institutions operating under these programs and the agencies concerned can carry out their programs better in the knowledge that the law will be extended for a 2-year period.

Mr. President, I have a fuller explanation of the bill, which I should like to have printed in the RECORD, and which I should be glad to read now if my friend so desires.

Mr. HRUSKA. I thank the Senator from Pennsylvania. His explanation is sufficient for the purpose.

Mr. CLARK. Mr. President, I ask unanimous consent to have the explanation printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATION OF S. 3323

S. 3323 (H. R. 10969) provides for extension of the remaining powers of the Defense Production Act for an additional 2 years, without amendment. Under present law these powers expire June 30, 1958.

The Defense Production Act now contains the following powers:

Title I, priorities and allocations: The priorities and allocations authorities of title I are now used to insure the prompt performance of procurement contracts let by the Department of Defense and the Atomic Energy Commission, through the use of preference ratings for these orders and through the Defense Material System under which producers of steel, copper, aluminum, and nickel are required to set aside a certain percentage of their production to fill orders of defense and AEC. In addition, the priorities and allocation authorities of title I are used to prohibit shipments to Communist China and North Korea on American ships and planes.

Title III of the act provides financial devices to increase productive capacity and supply.

Section 301 of the act authorizes the Federal Reserve Board V-loan program under which private bank loans to defense contractors are guaranteed in whole or in part by contracting agencies. For some time now the total of guaranteed agreements outstanding has amounted to about \$500 million and the amount of credit outstanding has been in the neighborhood of \$300 to \$400 million. This program has been a profitable one for the Government, resulting in about \$25 million in fees.

Section 302 and section 303 of the act authorize loans and procurement contracts, for essential productive facilities and materials, making use of a revolving fund of \$2.1 billion. Few new loans and new purchase programs are being undertaken at the present time, but there is considerable activity under earlier commitments. These provisions may, however, become important in connection with defense measures resulting from nuclear and space programs.

Title VII of the act contains a number of administrative provisions.

Section 708 includes authority for voluntary agreements providing for antitrust immunity. Under this authority there are now in force 16 agreements establishing integration committees for the Department of Defense. Under these agreements current and prospective contractors exchange information about products and processes, to the benefit of both the Department of Defense and the individual contractors. A voluntary agreement for foreign petroleum supply and another relating to tanker capacity, and one classified agreement were also established under this authority. The foreign petroleum supply and tanker capacity agreements are not now active. Reports on these agreements are received each quarter from the Department of Justice.

Section 710 of the act authorizes the use of w. o. c.'s and the new executive reserve, with exemptions from the conflict-of-interest statutes. The w. o. c. program is growing smaller according to the reports received each quarter from the Chairman of the Civil Service Commission, while the executive reserve program has increased substantially.

Section 712 of the act creates the Joint Committee on Defense Production, which has been active in following the progress of the executive agencies under the act.

A 2-year extension of the act was recommended by the President in his budget mes-

sage, by the Director of the Office of Defense Mobilization and by all the departments and agencies concerned. No opposition to the extension was made known to the committee.

A number of amendments to the act were proposed but were not incorporated in S. 3323, as reported by the committee. Senator Curtis' bill to require semiannual reports on dispersal was considered unnecessary in view of the reports on this subject which have already been received and in view of the statement by the Director of ODM that further reports on this subject would be made.

Senator HOLLAND's proposal to authorize loans to public agencies for transportation and other essential facilities was considered unnecessary in the light of the statements by the Housing and Home Finance Agency and Treasury Department that the Community Facilities Administration is now authorized to make these loans.

The proposal by the Budget Bureau and the Civil Service Commission that the quarterly report by the Chairman of the Civil Service Commission on w. o. c. appointments should be eliminated was not accepted. These reports are necessary as long as the exceptional authority to make w. o. c. appointments of industry-paid officials under an exemption from the conflict-of-interest statutes is still in force. The Chairman of the Civil Service Commission is expected to make sure that this program does not violate the letter or the spirit of the civil service laws, and he is expected to protect the Government against conflicting interests on the part of employees.

The committee did not accept a proposal for the establishment of a labor equalization differential for certain equipment under the Buy-American Act, in effect a tariff on the equipment. The committee considered that such a provision would be inappropriate in the Defense Production Act.

Prompt action on this bill is desirable. The industries and financial institutions operating under these programs and the agencies concerned can carry out their programs better in the knowledge that the law will be extended without any delay or gap.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill (S. 3323) was considered, ordered to be engrossed for a third reading, read the third time and passed, as follows:

Be it enacted, etc., That the first sentence of subsection (a) of section 717 of the Defense Production Act of 1950, as amended, is hereby amended by striking out "June 30, 1958" and inserting in lieu thereof "June 30, 1960."

Mr. CLARK subsequently said: Mr. President, I ask unanimous consent that the Senate reconsider the vote by which it passed Calendar No. 1742, S. 3323, to extend the Defense Production Act of 1950, as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLARK. Mr. President, I ask unanimous consent that the Committee on Banking and Currency be discharged from the further consideration of H. R. 10969, and that the Senate proceed to the consideration of the House bill. H. R. 10969 is identical with S. 3323. In the interest of orderly procedure it would be better to pass the House bill. At the time the calendar was called and the Senate bill considered, we did not know that the House had passed H. R. 10969.

The PRESIDING OFFICER. Without objection, the Committee on Banking and Currency is discharged from the further consideration of the House bill, which will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 10969) to extend the Defense Production Act of 1950.

The PRESIDING OFFICER. Is there objection to the present consideration of the House bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to a third reading, read the third time, and passed.

The PRESIDING OFFICER. Without objection, Senate bill 3323 is indefinitely postponed.

BILL PASSED OVER

The bill (S. 3916) to amend the Shipping Act of 1916, was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

Mr. HRUSKA. Over.

The PRESIDING OFFICER. The bill will be passed over.

JOSEPH H. LYM—BILL PASSED OVER

The bill (S. 3894) for the relief of Joseph H. Lym, doing business as the Lym Engineering Co., was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

Mr. WATKINS. Mr. President, will the Senator from Georgia withhold his objection until I give an explanation of the bill?

Mr. TALMADGE. I shall be happy to do so, Mr. President.

Mr. WATKINS. I thank the Senator.

Mr. President, this bill would pay \$111,080.60 to Joseph H. Lym, doing business as the Lym Engineering Co., in accordance with the findings of the court of claims, submitted pursuant to Senate Resolution 142, 84th Congress.

This claim arises out of a contract entered into with the Bureau of Reclamation for the construction by the claimant of an irrigation project to irrigate certain arid lands near Tucumcari, N. Mex. The contract called for the construction of laterals and sublaterals from an existing canal; headgates and other auxiliary construction, including outlets, over an area of approximately 24 square miles.

Claimant's bid in the amount of \$130,041.36 was submitted in February of 1945, at which time he was completing other Government war contracts in Utah and Wyoming and had in his employ competent supervisors and other skilled workmen. On February 15, 1945, 3 days after submitting his bid, he completed the other war contracts, but under existing regulations of the War Manpower Commission he was then required to release his skilled labor, with the right to reemploy them within 30 days. The damage suffered by the claimant was caused by the action of the War Production Board in failing to approve the project for con-

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

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CONTENTS

Appropriations	36,38		
Banking.....	26		
Barter.....	3		
Buildings.....	27		
Corn.....	25		
Cotton.....	17		
Defense production.....	35		
Economic situation...23,29			
rics.....	28		
Extension Service.....	19	Milk.....	1
Farm program.....7,20		Minerals.....	31
Flood control.....	6	Monopolies.....	10
Food stockpiling.....	30	Price supports.....	1
Foreign aid.....13,21		Public Law 480.....	3,32
Foreign trade.....	3	Recreation.....	34
Forestry.....24,34		Regulatory agencies....	33
Livestock loans.....	2	Renegotiation.....	22
		Research.....	11,16
		Small business.....	4,12
		Statehood.....	8,18
		Surplus commodities.....	3
		Surplus property.....	14
		Taxation.....	37
		Transportation.....	5,9
		Water resources.....	15

HIGHLIGHTS: Senate committee reported omnibus farm bill. House passed bill to extend special milk program for 3 years. House concurred in Senate amendment to bill to extend special livestock loan authority. Several Representatives urged extension of Public Law 480. Sen. Jackson introduced and discussed measure to provide food and fiber stockpiling program. Rep. Coad introduced and discussed bill to extend Public Law 480.

HOUSE

1. MILK. Passed without amendment, 327 to 1, S. 3342, to extend the special milk program for children for 3 years, from July 1, 1958, through June 30, 1961. The bill authorizes use of up to \$75 million of CCC funds for each of the 3 years to increase the consumption of fluid milk by children in nonprofit schools of high-school grade and under, and in nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children; and provides that funds expended for this purpose shall not be considered as amounts expended for the purpose of carrying out the price-support program. This bill will now be sent to the President. pp. 11483-492
2. LIVESTOCK LOANS. Concurred in the Senate amendment to H. R. 11424, to extend for 2 years, through July 14, 1961, the authority of the Secretary to make supplementary advances to borrowers for special livestock loans. This bill will now be sent to the President. pp. 11492

3. FOREIGN TRADE; SURPLUS COMMODITIES. Several Representatives urged early consideration of legislation for the extension of Public Law 480. Rep. Cooley and Poage indicated the measure would require further study, particularly with regard to the barter provision. Rep. McCormack expressed concern with the effects of surplus disposals on our relations with friendly countries. pp. 11485-86, 11487-490, 11542-43
4. SMALL BUSINESS. The Banking and Currency Committee reported with amendment S. 3651, to make equity capital and long-term credit more readily available for small business concerns (H. Rept. 2060). p. 11551
5. TRANSPORTATION. The Merchant Marine and Fisheries Committee reported without amendment H. R. 12751, to extend the provisions of the Shipping Act of 1916 relating to dual rate contract arrangements (H. Rept. 2055). p. 11551
Rep. Harris inserted the text, as passed by the House, of H. R. 12832, the omnibus transportation bill. He stated the text of the bill appearing in the June 27 Record was not complete. pp. 11500-502
6. FLOOD CONTROL. A subcommittee of the Public Works Committee ordered reported H. R. 9924, to grant the consent of Congress to a compact between Conn. and Mass. relating to flood control. p. D614

SENATE

7. FARM PROGRAM. The Agriculture and Forestry Committee reported ^(on June 28) an original bill, S. 4071, to provide price, production adjustment, and marketing programs for various commodities (S. Rept. 1766). p. 11398
8. STATEHOOD. Passed without amendment, 64 to 20, H. R. 7999, to admit Alaska into the Union as a State. This bill will now be sent to the President. pp. 11400, 11403-6, 11416-19, 11421-6, 11428-38, 11443-70
9. TRANSPORTATION. Senate conferees were appointed on S. 3778, the omnibus transportation bill. House conferees have been appointed. pp. 11426-8
10. MONOPOLIES. The Judiciary Committee ordered reported without amendment S. 721, to expedite the enforcement of Clayton Act cease and desist orders. p. D612
11. RESEARCH. Sens. Ellender and Proxmire were added as cosponsors to S. 3697, to create an Agricultural Research and Industrial Board to coordinate research into new industrial uses for farm crops. p. 11399
12. SMALL BUSINESS. H. R. 7963, to extend the Small Business Act of 1953 and increase the SBA loan authority, was made the pending business. p. 11470
13. FOREIGN AID. Sen. Bridges urged that Poland not be given foreign aid. p. 11416
14. SURPLUS PROPERTY. Sen. Thye urged enactment of S. 1318, to provide for the free donation of Federal surplus property to State and local governments for recreational purposes, and inserted a letter from the Minn. Conservation Commissioner supporting the bill. p. 11471
15. WATER RESOURCES. Sen. Watkins inserted a speech by a water attorney, "Current Developments in Water Law." pp. 11471-7

TEMPORARY EXTENSION OF USE OF DUAL RATES BY STEAMSHIP CONFERENCES

JUNE 30, 1958.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed

Mr. BONNER, from the Committee on Merchant Marine and Fisheries,
submitted the following

REPORT

[To accompany H. R. 12751]

The Committee on Merchant Marine and Fisheries to whom was referred the bill (H. R. 12751) to amend the Shipping Act, 1916; having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill H. R. 12751 would amend section 14 of the Shipping Act, 1916, to provide that nothing in that act shall be construed to forbid or make unlawful any dual-rate contract arrangement in effect at the time of enactment by members of a steamship conference organized under an agreement approved under section 15 of the act by the Federal Maritime Board.

The term "dual-rate contract arrangement" as used in the bill means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which is charged to shippers who agree to ship their cargoes on vessels of members of the conference exclusively and the higher of which is charged to those who do not.

This bill would become effective immediately upon enactment, and would continue in effect only until June 30, 1960. This is interim legislation to provide a reasonable time for thorough study of the entire operation of steamship conferences and their practices, the first in 44 years.

It is not the intent of the committee to circumvent the recent ruling of the Supreme Court in the *Isbrandtsen* case, since the Court in that instance decided the question before it on the very narrow grounds on which it was brought. The majority opinion did not set

aside the dual-rate system, nor conferences as such, but merely stated that it decided as it did:

* * * in view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing Isbrandtsen's competition.

This consideration, moreover, is particularly compelling in light of our present holding. Since, as we hold, section 14 third strikes down dual-rate systems only where they are employed as predatory devices, * * *.

BACKGROUND OF THE BILL

For years steamship companies have used the conference system as a method of setting rates within specified areas. These steamship conferences have in a great part operated on the dual-rate system whereby shippers who would contract to have conference lines carry all of their cargoes were granted a rate which was lower than that given to the occasional shipper who did not ship exclusively on conference ships. This mode of operation was used by more than 60 conferences, composed of innumerable steamship lines serving this country and had served the shipper by setting a specific rate for certain cargoes so that shippers would at all times know the basic rates to be paid and could set their competitive prices at a figure based on the known rate.

There were numerous steamship lines which operated independently of conferences and set their rates to secure fair profit on their investment. These independents had operated in direct competition with the conferences and had always opposed the conferences and their dual-rate system, claiming them to be unlawful. In that respect, it might be noted that the conference system and the resulting dual-rate contracts were not in violation of the antitrust law, being exempted by the Shipping Act of 1916. This question of legality of the conference system had repeatedly arisen before the Federal Maritime Board and before courts, and had been upheld until the present Supreme Court decision.

The Alexander committee, whose report to the Congress, submitted in 1914, brought about the Shipping Act of 1916, was the last time that exhaustive study had been devoted to this question. The intent of H. R. 12751 is to defer the impact of the Court decision so that this question and the problems arising thereunder may be given careful study and the committee may develop legislation to modernize practices which appear to need change.

The committee hearings brought out evidence to the effect that the conferences, as a general rule, had attempted to give regular point-to-point service and for this service expected to earn a fair margin of profit. Their rates, whether or not a particular conference used the dual-rate system, were based on this factor of regular service. It is axiomatic that the shipping business, like every other business, has its peaks and valleys, and in order to obtain a fair return their rates were set with these factors in mind. The independents operated in areas where there was greatest need of their service at a particular

time and they could thereby grant a lower freight rate. This factor was based on their usual custom of not maintaining regular service nor bringing their ships into a run when there was not sufficient business for them. Differing concepts of service of the two groups has been a bone of contention between the conferences and the independents since the inception of the conference system.

Shippers, both large and small, and in great numbers, either appeared at the hearings or submitted statements supporting the dual-rate system or the conference system as a whole, since that would tend to provide regular service and a stable basic freight rate upon which delivered prices for goods could be based. It goes without saying that an occasional shipper could in all probability ship under certain circumstances at a lower rate than that which would have been granted a contract shipper under the dual-rate system.

The General Services Administration favors the proposed legislation and recommends that it be enacted into law.

It will be noted that the Department of Justice which has on numerous occasions fought the dual-rate system on strictly legal grounds, offers this suggestion in its letter to the committee:

In considering whether or not to overturn Isbrandtsen, Congress should have the benefit of a full-scale study of the Shipping Act, 1916, and particularly the operations of dual-rate systems. To enable such study, involving a delicate balance of complex factors, Congress may well deem it advisable—for the interim—to suspend effectiveness of the recent Isbrandtsen decision.

We suggest that if Congress determines that such a freezing of the prior status quo is appropriate, the bill should expressly provide for that full-scale study of the operation of the dual-rate system, which some of its sponsors have indicated the bill envisions. Further, the committee making such study might well report its recommendations with respect to permanent legislation by January 30, 1960, in order to give Congress an adequate opportunity to act thereon before the 2-year period expires.

The Department of Agriculture, who along with the Department of Justice, appeared in the Isbrandtsen case, has submitted no departmental report on this proposed legislation. However, Martin J. Hudtloff, Director, Transportation and Storage Services Division, Commodity Stabilization Service, appeared before the committee and stated that his department, which handles all shipments of this type, was eminently satisfied with the dual-rate system and that they had been furnished regular, efficient service upon which all dependence could be placed. Mr. Hudtloff stated further that the department had never been required to sign an exclusive contract with any conference using the dual-rate system, but at the same time had always been granted the lower rate for its shipments.

The committee urges prompt enactment of this bill in order that stability may be maintained in the steamship industry during the period necessary for a complete study of the conference system. It is the intention of the committee to institute such a study as soon as present business permits.

The departmental reports follow:

UNITED STATES DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., June 11, 1958.

HON. HERBERT C. BONNER,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 12751) to amend the Shipping Act, 1916.

H. R. 12751 is an interim measure whose effectiveness would cease on June 30, 1960. It would amend section 14 of the Shipping Act, 1916, to provide that nothing therein shall make unlawful any dual-rate system in use on the effective date of the amendment by the members of a conference which is organized under an agreement approved under section 15 of the act by the Federal Maritime Board unless and until such Board disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in the section. The provision thus would validate for the next 2 years any dual-rate system then in use by members of a conference operating under an approved agreement, whether or not such system previously had been approved by the Board.

The bill was occasioned by the recent decision of the Supreme Court in *Federal Maritime Board, et al. v. Isbrandtsen Company, Inc., United States of America and Secretary of Agriculture* (Nos. 73, 74, October Term, 1957, decided May 19, 1958). The Court there held that a proposed dual-rate system of the Japan-Atlantic and Gulf Freight Conference, under which shippers who signed exclusive patronage contracts with the conference would pay 9½ percent less for the same service than shippers who did not sign such contracts, violated section 14 third of the Shipping Act, 1916 (46 U. S. C. 812). That section provides that no common carrier by water "shall, directly or indirectly * * * [r]etaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason." The Supreme Court held that a dual-rate system which is "designed to destroy the competition of independent carriers" or "to stifle outside competition," or which is "employed as [a] predatory device[s]," constitutes a "resort to other discriminating or unfair methods" in violation of section 14 third.

For more than a decade the Department of Justice has challenged the legality of the dual-rate system in the courts and before the Federal Maritime Board and its predecessor agency, the United States Maritime Commission. In our view, the system is inconsistent with the basic tenets of antitrust philosophy because it allows a group of businessmen concertedly to employ a coercive and discriminatory rate device which is designed to drive nonmembers of the combine out of the trade, or seriously to weaken their competitive position. Initially, the Department proceeded against the system under the Sherman Act, but the Supreme Court held that such suit could not be maintained because the validity of the dual-rate system was a matter within the

primary jurisdiction of the Federal Maritime Board (*Far East Conference v. United States*, 342 U. S. 570). Subsequently, the Department participated in several lengthy proceedings before the Board in which the validity of the system under the Shipping Act, 1916, was litigated, including the Isbrandtsen case recently decided by the Supreme Court.

In considering whether or not to overturn Isbrandtsen, Congress could have the benefit of a full-scale study of the Shipping Act, 1916 and particularly the operations of dual-rate systems. To enable such study, involving a delicate balance of complex factors, Congress may well deem it advisable—for the interim—to suspend effectiveness of the recent Isbrandtsen decision.

We suggest that if Congress determines that such a freezing of the prior status quo is appropriate, the bill should expressly provide for that full-scale study of the operation of the dual-rate system, which some of its sponsors have indicated the bill envisions. Further, the committee making such study might well report its recommendation with respect to permanent legislation by January 30, 1960, in order to give Congress an adequate opportunity to act thereon before the 2-year period expires.

We further note that H. R. 12751 goes beyond merely restoring the situation as it existed prior to the Supreme Court decision. In an earlier stage of this litigation, the Court of Appeals for the District of Columbia Circuit held in January 1954 that section 15 of the Shipping Act, 1916, "makes it illegal to institute the dual-rate system" without prior approval of that system by the Federal Maritime Board (*Isbrandtsen Co. v. United States*, 211 F. 2d 51, certiorari denied, 347 U. S. 990.)¹ H. R. 12751, however, would validate any existing dual-rate arrangement, whether or not it had been approved by the Board, unless and until the Board disapproves, cancels, or modifies such arrangement. There are a number of conferences which now employ a dual-rate system that has not been expressly approved by the Board. The bill would permit these conferences to continue to use their unapproved systems, even though they have been on notice for more than 4 years that such unapproved systems are illegal, and even though such systems would have been illegal even if the Supreme Court decision had gone the other way. However, in view of our having been advised that it is administratively not feasible for the Board to act on all of the as yet unapproved dual-rate arrangements in the next 2 years, the Department interposes no objection to this provision of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,
Deputy Attorney General.

¹ This holding was followed in *River Plate and Brazil Conferences v. Pressed Steel Car Company* (124 F. Supp. 88 (S. D. N. Y.)), and *Pacific Westbound Conference v. Leval & Co.*, (201 Oreg. 390, 269 P. 2d 541, certiorari denied, 348 U. S. 897).

GENERAL SERVICES ADMINISTRATION,

Washington, D. C., June 19, 1958.

Hon. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of June 3, 1958, requesting our views and recommendations on H. R. 12751, a bill to amend the Shipping Act of 1916.

The proposed legislation does not, directly, affect General Services Administration as a shipper, since the Government does not enter into special contract agreements with the various conferences. Indirectly however, this agency enjoys the lower published conference rates, either by courtesy or tariff authority.

It is our understanding that H. R. 12751 is intended to provide that current practices of the shipping conferences may be continued for a period of 2 years, pending further consideration by Congress in order to avoid a chaotic rate situation which might result immediately from a recent decision of the Supreme Court.

In terms of the foregoing, this agency favors the proposed legislation and recommends that it be enacted into law.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE,
Administrator.

DEPARTMENT OF THE NAVY,

OFFICE OF THE SECRETARY,

Washington, D. C., June 16, 1958.

Hon. HERBERT C. BONNER,

*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Your request for comment on H. R. 12751, a bill to amend the Shipping Act, 1916, has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The purpose of this bill is to permit until June 30, 1960, dual-rate contract arrangements whereby a shipper of goods enjoys a reduced rate if he agrees to ship his goods exclusively with conference members. As the impact of this legislation upon the Department of Defense is deemed insignificant, the Department of the Navy on behalf of the Department of Defense defers to the views of those executive agencies more directly concerned.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H. R. 12751 to the Congress.

Sincerely yours,

R. Y. McELROY,
*Captain, United States Navy,
Deputy Director, Legislative Liaison,
(For the Secretary of the Navy).*

SUPREME COURT OF THE UNITED STATES

NOS. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,
73 v.

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74 v.

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May 19, 1958.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Isbrandtsen Co., Inc., filed a petition in the United States Court of Appeals for the District of Columbia Circuit to review, under 5 U. S. C. §-1034, an order of the Federal Maritime Board¹ approving a rate system proposed by the Japan-Atlantic and Gulf Freight Conference (the Conference).² Under the proposed system a

¹⁴ F. M. B. 706. The Federal Maritime Board and its predecessors are hereinafter referred to as "the Board." Its predecessors were the United States Shipping Board (1916 to 1933); the United States Shipping Board Bureau in the Department of Commerce (1933 to 1936); and United States Maritime Commission (1936 to 1950).

² The Federal Maritime Board was named a respondent in Isbrandtsen's petition. The United States was also named as statutory respondent pursuant to 5 U. S. C. § 1034 but, appearing by the Department of Justice, joined Isbrandtsen in attacking the Board order. The Secretary of Agriculture intervened and joined in the

shipper would pay less than regular freight rates for the same service if he signs an exclusive-patronage contract with the Conference. Contract rates would be set at levels 91½ percent below noncontract rates. The Court of Appeals³ set aside the Board's order on the ground that this system of dual rates was illegal *per se* under § 14 of the Shipping Act, 1916, 39 Stat. 733, as amended, 46 U. S. C. § 812 Third.⁴ We granted certiorari. 353 U. S. 908.

Justice Department's brief. The Conference intervened by leave of the court. The same parties are before this Court.

³ 99 U. S. App. D. C. 312, 239 F. 2d 933.

⁴ Section 14 provides:

"No common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

"First. Pay or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper. The term 'deferred rebate' in this chapter means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

"Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term 'fighting ship' in this chapter means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

"Third. Retaliate against any shipper by refusing, or threatening to, refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

"Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly

The Conference is a voluntary association of 17 common carriers by water serving the inbound trade from Japan, Korea, and Okinawa to ports on the United States Atlantic and Gulf Coasts. Five of the carriers are American lines, eight are Japanese, and four are of other nationalities. The Conference presently operates under a Board approved Conference Agreement made in 1934. Prior to World War II, the Conference had no direct liner competition and little tramp competition.

After the war, Isbrandtsen entered the trade as the sole non-Conference line maintaining a regular berth service in the Japan-Atlantic trade. From 1947 to early 1949, Isbrandtsen operated from Japan to Atlantic Coast ports via the Suez Canal. Since 1949 Isbrandtsen has operated an approximately fortnightly service from Japan to United States Atlantic Coast ports via the Panama Canal as part of its Eastbound, Round-the-World Service.⁵

Although Conference membership is open to any common carrier regularly operating in the trade, Isbrandtsen has refused to join. Isbrandtsen's practice, between 1947 and March 12, 1953, was to maintain rates at approximately 10 percent below the corresponding Conference rates. The general understanding of shippers and carriers in the trade was that Isbrandtsen underquoted Conference rates by 10 percent. This practice of under-

treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

"Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense."

⁵ Isbrandtsen's vessels are not equipped with refrigerated space or silkrooms, as are many of the Conference vessels, and do not compete for cargoes requiring these facilities.

cutting Conference rates during the years 1950, 1951, and 1952, captured for Isbrandtsen 30 percent of the total cargo in the trade although Isbrandtsen provided only 11 percent of the sailings.⁶

Since outbound tonnage from the United States exceeds the inbound tonnage, the Japan-Atlantic and Gulf trade is presently over-tonnaged, and both Isbrandtsen and Conference vessels have had substantial unused cargo space after loading cargoes in Japan. Total sailings in the trade rose from 109 in 1949 to more than 300 in 1953. (Cf. Note 6, *supra*.) The re-entry of the Japanese lines in the trade after World War II, four in 1951 and four in 1952, greatly contributed to the excess of tonnage. For the years 1951, 1952, and the first 6 months of 1953, the Japanese lines carried approximately 15 percent, 49 percent, and 66 percent, respectively, of the trade's total liner cargo. For the years 1950, 1951, 1952, and the first 6 months of 1953, American flag lines, including Isbrandtsen but excluding two others, carried 53 percent, 46 percent, 34 percent, and 21 percent respectively.

When, in late 1952, Isbrandtsen announced a plan to increase sailings from two to three or four sailings a month, the Conference foresaw a further increase in

⁶ The comparative sailings and carryings are indicated in the following table:

Calendar year	Number of sailings			Cargo carried (revenue tons)			Average carryings per sailings		Percentage of total liner cargo	
	Is-brandt-sen	Conf.	Total	Is-brandt-sen	Conf.	Total	Is-brandt-sen	Conf.	Is-brandt-sen	Conf.
1949.....	6	103	109	18,099	135,635	153,734	3,016	1,317	12	88
1950.....	21	137	158	120,381	229,829	350,210	5,780	1,678	34	66
1951.....	21	174	195	93,450	219,343	312,793	4,450	1,261	30	70
1952.....	24	221	245	98,834	281,308	380,142	4,118	1,273	26	74
1953 — 6 months.	12	153	165	37,308	189,503	226,811	3,109	1,239	16	84

Isbrandtsen's participation which, because of the nationalistic preference of Japanese shippers, would probably be at the expense of the non-Japanese Conference lines. To meet this outside competition the Conference first attempted, in November of 1952, a 10 percent reduction in rates, but Isbrandtsen answered with a reduction of its rates 10 percent under the Conference rates.

On December 24, 1952, the Conference proposed the dual-rate system and filed its plan with the Board as required by the Board's General Order 76, 46 CFR § 236.3, which permitted proposed rate changes to become effective after 30 days unless postponed by the Board on its own motion or on the protest of interested persons. Protests were filed by Isbrandtsen and the Department of Justice. The Secretary of Agriculture intervened as an interested commercial shipper opposed to the proposal. On January 21, 1953, the Board ordered a hearing on the protests but refused, pending the Board's determination, to suspend operations of the dual-rate system. Isbrandtsen, therefore, filed a petition in the United States Court of Appeals for the District of Columbia Circuit for a stay of the Board's order insofar as it authorized the Conference to institute the dual-rate system. The court announced on February 3, 1953, that the Board's order would be stayed and the stay was entered on March 23, 1953.⁷

The Conference response to the stay was to open rates to allow each line to fix its own rates. At a meeting on March 12, 1953, the Conference voted to open Conference rates on 10 of the major commodities moving in the trade. The action was primarily directed at Isbrandt-

⁷ On January 21, 1954, the Court of Appeals handed down its final decision holding that § 15 of the Shipping Act required the Board to hold a hearing on the proposed dual-rate system before approval. 93 U. S. App. D. C. 293, 211 F. 2d 51.

sen's competition; the Board found that "it was hoped that the rate war would lead to Isbrandtsen's joining the Conference or to the institution of the dual rate system or other system." On succeeding dates in the spring of that year, the Conference opened rates on most of the major items in the trade. In the resulting rate war, the level of rates dropped to about 80 percent and later to about 30 percent to 40 percent of the pre-March 12 rates. In some instances, rates fell below handling costs. Isbrandtsen attempted to keep on a competitive basis in the rate war but, when pegging of minimum rates in May did not improve its position, in July it set its rates at 50 percent of the pre-March 12 Conference rates. Since that date, Isbrandtsen has carried little cargo in the trade. Meanwhile the Board proceeded with the hearing and issued its report on December 14, 1955, followed on December 21, 1955, and January 11, 1956, by orders approving the proposed dual-rate system.⁸ The question for our decision is whether the Court of Appeals correctly set aside the Board's orders.

It has long been almost universal practice for American and foreign steamship lines engaging in ocean commerce to operate under conference arrangements and agreements. At least by 1913 it was recognized that such agreements might run counter to the policy of the anti-trust laws; several cases were pending against foreign and domestic water carriers for alleged violations of the Sherman Act. The House Committee on Merchant Marine and Fisheries of the 62d Congress, of which committee Representative J. W. Alexander was Chairman, undertook an exhaustive inquiry into the practices of shipping conferences. The work of this Committee is

⁸ The Board did modify the exclusive-patronage contracts to delete from their coverage refrigerated cargoes for which Isbrandtsen did not compete.

set forth in two volumes of hearings,⁹ a volume of diplomatic and consular reports, and a fourth volume containing the Committee's report, known as the Alexander Report.¹⁰ Contemporaneously a British inquiry was conducted by the Royal Commission on Shipping Rings. The Royal Commission's report was available to the House Committee and was considered by it in formulating recommended legislation. See Hearings, 369.

Both inquiries brought to light a number of predatory practices by shipping conferences designed to give the conferences monopolies upon particular trades by forestalling outside competition and driving out all outsiders attempting to compete. The crudest form of predatory practice was the fighting ship. The conference would select a suitable steamer from among its lines to sail on the same days and between the same ports as the non-member vessel, reducing the regular rates low enough to capture the trade from the outsider. The expenses and losses from the lower rates were shared by the members of the conference. The competitor by this means was caused to exhaust its resources and withdraw from competition.

More sophisticated practices depended upon a tie between the conference and the shipper. The most widely used tie, because the most effective, was the system of deferred rebates. Under this system a shipper signed a contract with the conference exclusively to patronize its steamers, and if he did so during the contract term, and for a designated period thereafter, a rebate of a certain percentage of his freight payments was made to him at the end of the latter period. In this way, the shipper was under constant obligation to give his patron-

⁹ Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations under House Resolution 587, Hearings, 62d Cong. (Hereinafter "Hearings.")

¹⁰ H. R. Doc. No. 805, 63d Cong., 2d Sess. (Hereinafter "Report.")

age exclusively to the conference lines or suffer the loss of the rebate, which often amounted to a considerable sum.

But the Alexander Committee also found evidence of other predatory practices. Shippers who patronized outside competitors were denied accommodations for future shipments even at full rates of freight, or were discriminated against in the matter of lighterage and other services. Outside competition was also met by dual-rate contracts, by contracts with large shippers at lower rates for volume shipments, and by contracts with American railroads giving conference vessels preference in the handling of cargoes at the docks, and delivering through shipments of freight to conference vessels. Report, 287-293.

The Alexander Committee recommended against a flat prohibition of shipping combinations because it found that the restoration of unrestricted competition among carriers would operate against the public interest by depriving American shippers of desirable advantages of conference arrangements honestly and fairly conducted. The Committee mentioned advantages such as "greater regularity and frequency of service, stability and uniformity of rates, economy in the cost of service, better distribution of sailings, maintenance of American and European rates to foreign markets on a parity, and equal treatment of shippers through elimination of secret arrangements and underhanded methods of discrimination." *Id.*, at 416. The Committee believed that these advantages could be preserved "only by permitting the several lines in any given trade to cooperate through some form of rate and pooling arrangement under Government supervision and control," *ibid.*, and further "that the disadvantages and abuses connected with steamship agreements and conferences as now conducted are inherent, and can only be eliminated by effective government con-

trol; and it is such control that the Committee recommends as the means of preserving to American exporters and importers the advantages enumerated, and of preventing the abuses complained of." *Id.*, at 418.

In passing the Shipping Act of 1916, 39 Stat. 733, as amended, 46 U. S. C. § 812 Third, Congress followed the basic recommendations of the Alexander Committee.¹¹ The Act does not forbid shipping conferences in foreign commerce but requires all conference agreements covering the subjects mentioned in § 15 to be submitted for Board approval.¹² No power to fix rates is granted to

¹¹ H. R. Rep. No. 659, 64th Cong., 1st Sess. 27; see S. Rep. No. 625, 64th Cong., 1st Sess. 7. The Alexander Report was submitted in 1914 to the 63d Congress and a bill to carry out its recommendations was introduced but not passed. H. R. 17328, 63d Cong., 2d Sess. In the following Congress substantially the same bill was reintroduced, H. R. 15455, 64th Cong., 1st Sess., and became the Shipping Act of 1916.

¹² Section 15 provides:

"Every common carrier by water, or other person subject to this chapter, shall file immediately with the Federal Maritime Board a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements.

"The Board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers,

the Board. Subject to familiar limitations, the power vested in the Board is to approve agreements not found to be unjustly or unfairly discriminatory in violation of §§ 16 and 17 or otherwise in violation of the Act. Approved agreements are exempted from the antitrust laws.

But it must be emphasized that the freedom allowed conference members to agree upon terms of competition subject to Board approval is limited to the freedom to agree upon terms regulating competition among themselves. The Congress in § 14 has flatly prohibited practices of conferences which have the purpose and effect of stifling the competition of independent carriers. Thus the deferred rebate system (§ 14 First) and the fighting ship (§ 14 Second) are specifically outlawed. Similarly, § 14 Third prohibits another practice, common in 1913: to “[r]etaliat[e] against any shipper by refusing . . . space accommodations when such are available . . .”; that prohibition, moreover, is enlarged to condemn retaliation not only when taken “because such shipper has patronized any other carrier” but also when taken because the shipper “has filed a complaint charging unfair treatment, *or for any other reason.*” (Emphasis added.)

But in addition to these specifically proscribed abuses, Congress, as previously noted, was aware that other devices—some known but not so widely used, and others that might be contrived—might be employed to achieve the same results. Therefore, coordinate with these three clauses aimed at specific practices, a fourth category,

or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations.

“Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the [Antitrust Acts]” 39 Stat. 733, as amended, 46 U. S. C. § 814.

couched in general language, was added: "resort to other discriminating or unfair methods" In the context of § 14 this clause must be construed as constituting a catch-all section by which Congress meant to prohibit other devices not specifically enumerated but similar in purpose and effect to those barred by § 14 First, Second, and the "retaliate" clause of § 14 Third.

The reason the "resort to" clause was added to the statute as an independent prohibition of practices designed to stifle outside competition is revealed in the Alexander Report. From information contained in the Report of the British Royal Commission and a communication from a major New York carrier organization, the Alexander Committee was aware that the outlawing of the deferred-rebate system would lead conferences to adopt a contract system to accomplish the same result. The British Royal Commission believed that ties to shippers were justified and that the abuses of the deferred-rebate system should be tolerated in the interest of achieving a strong conference system. Hearings, 369-381. However, the Alexander Committee, and the Congress in adopting the Committee's proposals, reached a different conclusion. Congress was unwilling to tolerate methods involving ties between conferences and shippers designed to stifle independent carrier competition. Thus Congress struck the balance by allowing conference arrangements passing muster under §§ 15, 16, and 17 limiting competition among the conference members while flatly outlawing conference practices designed to destroy the competition of independent carriers.¹³ Ties

¹³ Both the section which became § 14 Third and the section which became § 15, as originally proposed, used the language "discriminating or unfair." H. R. 17328, 63d Cong., 2d Sess. The bill which became the Shipping Act, H. R. 15455, 64th Cong., 1st Sess., substituted "unjustly discriminatory or unfair" in § 15 but left untouched "discriminatory or unfair" in § 14 Third.

to shippers not designed to have the effect of stifling outside competition are not made unlawful. Whether a particular tie is designed to have the effect of stifling outside competition is a question for the Board in the first instance to determine.

Since the Board found that the dual-rate contract of the Conference was "a necessary competitive measure to offset the effect of non-conference competition" required "to meet the competition of Isbrandtsen in order to obtain for its members a greater participation in the cargo moving in the trade,"¹⁴ it follows that the contract was a "resort to other discriminating or unfair methods" to stifle outside competition in violation of § 14 Third.

The Board argues, however, that Congress, although aware of the use of such contracts, did not specifically outlaw them and therefore implicitly approved them. But the contracts called to the attention of Congress bear little resemblance to the contracts here in question. Those joint contracts were described by the Alexander Committee as follows:

"Such contracts are made for the account of all the lines in the agreement, each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified

¹⁴ The Board estimated that Isbrandtsen would lose approximately two-thirds of its 1952 volume. "... [I]t [is] probable that Isbrandtsen will retain 10 percent or more of the cargo moving in the trade as against the 26 percent carried by it in 1952" 4 F. M. B. 706, —.

in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, i. e. are willing at all times to contract with all shippers on the same terms." Report, 290.

These contracts were very similar to ordinary requirements contracts. They obligated all members of the Conference to furnish steamers at regular intervals and at rates effective for a reasonably long period, sometimes a year. The shipper was thus assured of the stability of service and rates which were of paramount importance to him. Moreover, a breach of the contract subjected the shipper to ordinary damages.

By contrast, the dual-rate contracts here require the carriers to carry the shipper's cargo only "so far as their regular services are available"; rates are "subject to reasonable increase" within two calendar months plus the unexpired portion of the month after notice of increase is given; "[e]ach Member of the Conference is responsible for its own part only in this Agreement"; the agreement is terminable by either party on three months' notice; and for a breach, "the Shipper shall pay as liquidated damages to the Carriers fifty per centum (50%) of the amount of freight which the Shipper would have paid had such shipment been made in a vessel of the Carriers at the Contract rate currently in effect." Until payment of the liquidated damages the shipper is denied the reduced rate, and if he violates the agreement more than once in 12 months, he suffers cancellation of the agreement and the denial of another until all liquidated damages have been paid in full. Thus under this agreement not only is there no guarantee of services and rates for a reasonably long period, but the liquidated-damages provision bears a strong resemblance to the feature which Congress particularly objected to in the outlawed deferred rebate

system. Certainly the coercive force of having to pay so large a sum of liquidated damages ties the shipper to the Conference almost as firmly as the prospect of losing the rebate. It would be anomalous for Congress to strike down deferred rebates and at the same time fail to strike down dual-rate contracts having the same objectionable purpose and effect. Events have proved the accuracy of the prediction that the outlawing of the deferred-rebate system would lead conferences to adopt a contract system, as here, specially designed to accomplish the same result.

It is urged that our construction "produces a flat and unqualified prohibition of *any* discrimination by a carrier for *any* reason" and converts the rest of the statute into surplusage. But that argument overlooks the revealed congressional purpose in § 14 Third. That purpose, as we have said, was to outlaw practices in addition to those specifically prohibited elsewhere in the section when such practices are used to stifle the competition of independent carriers. The characterization "unjustly discriminatory" and "unjustly prejudicial" found in other sections (§§ 15, 16 and 17) imply a congressional intent to allow some latitude in practices dealt with by those sections, but the practices outlawed by the "resort to" clause of § 14 Third take their gloss from the abuses specifically proscribed by the section; that is, they are confined to practices designed to stifle outside competition.¹⁵

¹⁵ The Court of Appeals made a partial application of the rule of *ejusdem generis* and related the "resort to" clause to retaliation, holding the dual-rate contract or suit was retaliatory and within the ban of the section. The Board urges that the Court of Appeals did not carry the rule of *ejusdem generis* far enough, that by carrying the rule "a hand's breadth farther" and also relating—and limiting—the "resort to" clause to the refusal of space accommodations and *similar services* to shippers, the dual-rate contract falls without the

Petitioners argue that our construction of § 14 Third is foreclosed by this Court's decisions in *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, and *Far East Conference v. United States*, 342 U. S. 570. A reading of those opinions immediately refutes any suggestion either that this issue was expressly decided in those cases or that our holding here is not fully consistent with the disposition of those cases. In *Cunard* the petitioner had filed a complaint in the District Court alleging that respondents had conspired to maintain "a general tariff rate and a lower contract rate, the latter to be made available only to shippers who agree to confine their shipments to the lines of respondents." The differentials were alleged to be unrelated to volume or regularity of shipments, but to be wholly arbitrary and unreasonable and designed "for the purpose of coercing shippers to deal exclusively with respondents and refrain from shipping by the vessels of petitioner, and thus exclude it entirely from the carrying trade between the United States and Great Britain." An injunction was sought under the Sherman and Clayton Acts. The Court held that the questions raised by this complaint were within the primary jurisdiction of the Shipping Board and therefore the courts could not entertain the suit until the Board had considered the matter. In *Far East Conference* the Court similarly held that the Board's primary jurisdiction precluded the United States from bringing antitrust proceedings against a shipping conference maintaining dual rates.

The Board and the Conference argue that, if the Court in these earlier cases had thought that § 14 Third in any

prohibition because the contract is concerned only with *charges for services* and not with *denial of services*. We do not believe that these constructions can be reconciled with the language of the statute or the scope of the congressional plan.

way makes dual rates *per se* illegal and thus not within the power of the Board to authorize, it would not have found it necessary to require that the Board first pass upon the claims. But in the *Cunard* case the Court said:

“Whether a given agreement among such carriers should be held to contravene the act may depend upon a consideration of economic relations, of facts peculiar to the business or its history, of competitive conditions in respect of the shipping of foreign countries, and of other relevant circumstances, generally unfamiliar to a judicial tribunal, but well understood by an administrative body especially trained and experienced in the intricate and technical facts and usages of the shipping trade; and with which that body, consequently, is better able to deal.” 284 U. S. 474, 485.

Similarly, in the *Far East Conference* case:

“The Court [in *Cunard*] thus applied a principle, now firmly established, that in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. *This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined.* Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.” 342 U. S. 470, 574–575. (Emphasis added.)

It is, therefore, very clear that these cases, while holding that the Board had primary jurisdiction to hear the case in the first instance, did not signify that the statute left the Board free to approve or disapprove the agreements under attack. Rather, those cases recognized that in certain kinds of litigation practical considerations dictate a division of functions between court and agency under which the latter makes a preliminary, comprehensive investigation of all the facts, analyzes them, and applies to them the statutory scheme as it is construed. Compare *Denver Union Stock Yard Co. v. Producers Livestock Marketing Assn.*, 356 U. S. —. It is recognized that the courts, while retaining the final authority to expound the statute, should avail themselves of the aid implicit in the agency's superiority in gathering the relevant facts and in marshaling them into a meaningful pattern. Cases are not decided, nor the law appropriately understood, apart from an informed and particularized insight into the factual circumstances of the controversy under litigation.

Thus the Court's action in *Cunard* and *Far East Conference* is to be taken as a deferral of what might come to be the ultimate question—the construction of § 14 Third—rather than an implicit holding that the Board could properly approve the practices there involved. The holding that the Board had primary jurisdiction, in short, was a device to prepare the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court of the scope and meaning of the statute as applied to those particular circumstances. To have held otherwise would, necessarily, involve the Court in comparatively abstract exposition.

This consideration, moreover, is particularly compelling in light of our present holding. Since, as we hold, § 14 Third strikes down dual-rate systems only where they are employed as predatory devices, then precise findings by the Board as to a particular system's intent and effect

would become essential to a judicial determination of the system's validity under the statute. In neither *Cunard* nor *Far East Conference* did the Court have the assistance of such findings on which to base a determination of validity. We conclude, therefore, that the present holding is not foreclosed by these two cases.¹⁶

Finally, petitioners argue that this Court should not construe the Shipping Act in such a way as to overturn the Board's consistent interpretation. "[T]he rulings, interpretations and opinions of the [particular agency] . . . , while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U. S. 134, 140. But we are here confronted with a statute whose administration has been shifted several times from one agency to another, and it is by no means clear that the Board and its predecessors have taken uniform and consistent positions in regard to

¹⁶ Certainly it must be assumed that the Court would refrain from settling *sub silentio* an issue of such obvious importance and difficulty plainly requiring a clearly expressed disposition.

Petitioners' reliance on *Swayne & Hoyt, Ltd., v. United States*, 300 U. S. 297, is similarly misplaced. In that case the Court upheld the administrative determination that a dual-rate system gave an "undue or unreasonable preference or advantage" under § 16 of the Shipping Act. Because the Court sustained the finding as supported by substantial evidence it did not need to reach the more contentious problem of whether that particular contract was illegal under § 14 Third.

the validity of dual-rate systems under § 14 Third.¹⁷ See *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 889–891. In view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing Isbrandtsen's competition, thus becoming a device made illegal by Congress in § 14 Third, we need not give controlling weight to the various treatments of dual rates by the Board under different circumstances.

Affirmed.

¹⁷ Compare, *e. g.*, *Eden Mining Co.*, 1 U. S. S. B. 41, and *Contract Routing Restrictions*, 2 U. S. M. C. 220, 226–227, with *The Rawleigh Co.*, 1 U. S. S. B. 285, 290.

SUPREME COURT OF THE UNITED STATES

Nos. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,
73 *v.*

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74 v.

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May 19, 1958.]

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE BURTON joins, dissenting.

The Court today holds that any dual system of international steamship rates tied to exclusive patronage contracts that is designed to meet outside competition—howsoever justified it may be as a reasonable means of counteracting cut-throat competition—violates § 14 of the Shipping Act of 1916¹ and cannot be approved by the Federal Maritime Board pursuant to § 15 of that Act. The Court thus outlaws a practice that has prevailed among international steamship conferences for half a century,² that is presently employed by at least half of the hundred-odd conferences subject to Board jurisdic-

¹ 39 Stat. 728, 733, as amended, 46 U. S. C. § 812.

² See, *e. g.*, agreements set forth at pp. 262-263 of Hearings before the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations, 62d Cong.

tion,³ and that has been found by the Board in this case to decrease the probability of ruinous rate wars in the shipping industry.⁴ In doing so, the Court does more than set aside a weighty decision of the Federal Maritime Board. It could do so only by rendering meaningless two prior decisions in which this Court respected the power given by Congress to the Board, within the usual limits of administrative discretion, to approve or disapprove such agreements.

The agreement involved in this case is typical of the contracts used by the loose associations of steamship lines known as "conferences" to effectuate their dual-rate systems. See Marx, *International Shipping Cartels*, 207-210. The contracting shipper agrees to forward all of his shipments moving in the "trade" or route of the conference by bottoms of conference members (§ 1). In return, the conference members, "so far as their regular services are available," agree to carry the shipper's goods at rates below those charged to noncontracting shippers; rates are subject to reasonable increase upon specified notice (§ 2). The conference members agree to maintain service adequate to the reasonable requirements of the trade, and if they fail to provide the shipper (who may ordinarily select which of the conference members' vessels will carry his goods) with needed space, he may obtain space from nonconference carriers (§ 4). If the shipper makes any shipments in violation of the agreement, he must pay as liquidated damages 50 percent of

³ Respondent Isbrandtsen, in its petition to the Court of Appeals to review the order of the Federal Maritime Board stated (at par. 10b.) that "[o]f the about one hundred seventeen steamship freight conferences organized pursuant to Section 15 of the Shipping Act, and subject to the jurisdiction of the Board, about sixty-two conferences presently employ that system" See also Marx, *International Shipping Cartels*, 207.

⁴ 4 F. M. B. 706, —, —, 1956 Am. Mar. Cas. 414, 451, 454.

the amount of freight he would have paid if he had made the shipment under the contract, and he is not entitled to contract rates until he pays these damages (§ 5). If the shipper violates the agreement more than once in a twelve-month period, the agreement is canceled, and no new agreement will be entered into until all damages are paid (*ibid.*). Either party may cancel the agreement on three months' notice (§ 9), and any dispute arising out of the agreement is to be submitted to arbitration (§ 10).

Such differences as exist among the dual-rate systems that have for long been in wide use in international ocean transportation are irrelevant if each such system is to be judged by the new test laid down by the Court: is it aimed at meeting outside competition? Of course these exclusive patronage contracts and the dual-rate systems of which they are an integral part are designed to meet nonconference competition. And there should be no mistake but that today's decision outlaws such systems. This result cannot be clouded by the Court's reliance upon "findings" of the Board that it

"consider[s] the inauguration of a dual rate system to be a necessary competitive measure to offset the effect of non-conference competition in this trade" (4 F. M. B. 706, —, 1956 Am. Mar. Cas. 414, 450.)

and that

"a reduction in the amount of conference sailings or other solution to the overtonnaging problem would not mitigate the conference's need to meet the competition of Isbrandtsen in order to obtain for its members a greater participation in the cargo moving in the trade." (4 F. M. B., at —, 1956 Am. Mar. Cas., at 451.)

These statements in the Board's opinion are nothing more than a recognition of the dual-rate system as a device for meeting outside competition; they provide a basis neither

for distinguishing the situation before us from any other familiar use of a dual-rate system nor for concluding that the conference members in this case instituted the system in order to "stifle" outside competition.

While limits have been imposed upon enterprise in meeting competition, which is itself the governing principle of our economic system, these limits, embodied in the antitrust laws, were found to be inapplicable to, because destructive of our national interest in, the international ocean transportation industry. The United States obviously could not completely regulate the foreign carriers with whom American carriers compete (not to mention the carriers that serve foreign shippers with whom American shippers compete). In view of the prevailing characteristics of the industry, it early became apparent that it would, on the whole, be in the national interest to tolerate some practices of steamship lines that in other industries would be deemed inadmissible. For the alternative, so it was concluded, would be to put it within the power of unregulated foreign carriers seriously to injure American firms—both carriers and shippers—if not, indeed, to put them out of business. And so, in the development of a scheme for regulating this international industry, self-protective measures by way of collective action were not left to the condemnation of the Sherman and Clayton Acts. In order to appreciate the Shipping Act of 1916 as an attempt to balance the need for some regulation with the economic and political objections to sweeping the shipping industry under the antitrust concept, the circumstances that begot the Act must be recalled.

The second half of the Nineteenth Century saw a tremendous rise in the development of ocean transportation by steamship. Unfortunately, the supply of available cargo space increased during this period much more rapidly than the demand for it. The inevitable result

was cut-throat competition among steamship owners. This in turn was followed by mergers of ownership and by concerted efforts among individual owners to limit competition. The practices by which this end was pursued led to abuses and demands for their correction, to which a number of governments at the turn of the century began to direct their attention. A series of investigations of rates and practices in various parts of the British Empire was followed by the appointment in 1906 of the Royal Commission on Shipping Rings, which rendered its report in 1909. See, generally, Marx, *supra*, at 45-50; see also Johnson and Huebner, *Principles of Ocean Transportation*, 263-302. In the United States, the Department of Justice in 1911 brought two proceedings against three steamship conferences to enjoin competitive practices in alleged violation of the Sherman Act, *United States v. Prince Line, Ltd.*, 220 F. 230; *United States v. Hamburg-American S. S. Line*, 216 F. 971.⁵

The terms of the resolutions that gave rise to the historic investigation of shipping combinations by the House Committee on the Merchant Marine and Fisheries in 1912-1913, H. Res. 425 and H. Res. 587, 62d Cong., 2d Sess., 48 Cong. Rec. 2835-2836, 9159-9160, manifest the concern of Congress over these steamship conferences and their practices. The investigation was thorough and detailed. The Committee, under the chairmanship of Representative Joshua W. Alexander of Missouri, elicited great quantities of relevant data from shippers, carriers, trade organizations and the Departments of State and Justice, including copies of many kinds of agreements among carriers and between carriers and shippers, and it held extensive hearings in January-March,

⁵ On appeal, the very limited decrees obtained by the Government against some members of two of the conferences were reversed, 239 U. S. 466, 242 U. S. 537, and the suits directed to be dismissed on the score of mootness because of World War I.

1913. Fully considered were exclusive patronage agreements between shippers and conferences providing for a dual rate, see, *e. g.*, Hearings before the House Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations, 62d Cong., 248, 254, 262–263; see also *id.*, at 246, 263.

In 1914 the Committee submitted its comprehensive report. In summarizing the competitive methods used by steamship conferences in the American foreign trade, the report discussed, under the heading “*Meeting the competition of lines outside of the conference*,” deferred rebate systems, the use of fighting ships, agreements with American railroads, and such types of contracts with shippers as individual requirements contracts, contracts giving preferential rates to large shippers, and the following:

“(a) *Joint contracts made by the conference as a whole*.—Such contracts are made for the account of all the lines in the agreement, each carrying its proportion of the contract freight as tendered from time to time. The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers, and to announce the quantity of cargo to be shipped in ample time to allow for the proper supply of tonnage. The rates on such contracts are less than those specified in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shippers, *i. e.* are willing at all times to contract with all shippers on the same terms.” Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade, 63d Cong. 290.

There can be no doubt that the Committee was amply alive to the primary purpose of the dual-rate system. But it did not, in subsequently discussing (*id.*, at 304–307)

the "Disadvantages of Shipping Conferences and Agreements, as Now Conducted," make any reference to the system as such, although it dealt extensively and disapprovingly, on the basis of evidence put before it, with such practices as deferred rebates, fighting ships, and retaliation against shippers for airing grievances. Nor were there any strictures against dual-rate systems in the survey of recommendations of witnesses at the hearings for corrective legislation (*id.*, at 307-314), although it was there noted that recommendations were made in favor of prohibitions against deferred rebates and retaliation by refusal of accommodations to a shipper because "he may have shipped by an independent line, or may have filed a complaint charging unfair treatment, or for other unjust reasons." *Id.*, at 313.

In making its own recommendations (*id.*, at 415-421), the Committee recognized that steamship lines almost universally form conferences and enter into agreements for the purpose (among others) of "meeting the competition of non-conference lines." *Id.*, at 415. The Committee recognized that it had to choose between prohibition of these conferences or subjection of them to government supervision.

"It is the view of the Committee that open competition can not be assured for any length of time by ordering existing agreements terminated. The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars, and represent a truce between the contending lines." *Id.*, at 416.

To prohibit existing arrangements, said the Committee, would be to invite rate wars leading to monopoly or to the exposure of American shippers and lines to disastrous

competition with foreign shippers and lines. Among the complaints relating to existing conditions was "the unfairness of certain methods—such as fighting ships, deferred rebates, and threats to refuse shipping accommodations—used by some conference lines to meet the competition of nonconference lines." *Id.*, at 417. The Committee concluded that the system of conferences and agreements was not to be uprooted. Its disadvantages and abuses must be curbed by effective government control.

Among the specific recommendations of the Committee were that carriers be required to file for approval with the regulatory agency (the Committee recommended use of the Interstate Commerce Commission) any agreements among themselves or with shippers, with the agency being empowered to cancel agreements it found to be "discriminating or unfair in character, or detrimental to the commercial interests of the United States" (*id.*, at 420); that the agency be empowered to investigate and institute proceedings concerning rates that are "unreasonably high, or discriminating in character as between shippers" (*ibid.*), and

"... That the use of 'fighting ships' and deferred rebates be prohibited in both the export and import trade of the United States. Moreover, all carriers should be prohibited from retaliating against any shipper by refusing space accommodations when such are available, or by resorting to other unfair methods of discrimination, because such shipper has patronized an independent line, or has filed a complaint charging unfair treatment, or for any other reason." *Id.*, at 421.

The cautious generality of the latter portion of this last recommendation (and, surely, of the legislative provision based on it) doubtless reflects a feeling on the part of the Committee that many shippers refrained from de-

scribing the various forms of and reasons for retaliation against them by carriers, for fear that they would subsequently be retaliated against for making the disclosures. See, *e. g.*, *id.*, at 5.

The report of the Committee was filed in February 1914, and four months later Representative Alexander introduced a bill, H. R. 17328, incorporating its recommendations. The bill provided, among other things, that carriers be required to file for approval with the Interstate Commerce Commission any of a wide variety of agreements, that the Commission be empowered to cancel or modify agreements that it found "discriminating or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or that it may find to operate to the detriment of the commerce of the United States, or that may be in violation of this Act," and that agreements when approved should be exempt from the anti-trust laws (§ 3). Where the Commission was of the opinion that rates, charges, classifications, regulations or practices were "unjust or unreasonable," it was empowered to determine and enforce what would be just and reasonable under the circumstances (§ 7). And the bill (§ 2) provided that it should be a misdemeanor (punishable by fine of up to \$25,000) for any carrier to allow deferred rebates, use a fighting ship, or:

"Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment or for any other reason."

As no action was taken on H. R. 17328 in 1914, it was reintroduced by Mr. Alexander in the 64th Congress late in 1915 as H. R. 450. Shortly thereafter he introduced H. R. 10500, a bill "To establish a United States Shipping

Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions, and with foreign countries, and for other purposes." That bill authorized the Board to purchase or charter commercial vessels to be leased to private concerns in peacetime and used as a naval auxiliary in wartime; the bill also (§§ 9, 10) provided for very general regulation by the Board of the ocean transportation industry.

Approximately two months later, in April 1916, Mr. Alexander introduced H. R. 14337, which adapted his earlier regulatory bill (H. R. 450) to the administrative framework of the Shipping Board bill (H. R. 10500). The bill was considered in committee with a view to substituting its provisions for the general regulatory language of §§ 9 and 10 of the Shipping Board bill. See Hearings before the House Committee on the Merchant Marine and Fisheries on H. R. 14337, 64th Cong., 1st Sess. 5. In these hearings, there was no discussion of the "retaliation" provision of the bill; attention was concentrated on its more controversial aspects, such as the power of the Board to regulate rates.

At the close of these hearings, in early May 1916, a new Shipping Board bill, H. R. 15455, in which the substitution of the more detailed regulatory provisions had been made, was introduced by Mr. Alexander. The bill added a "Fourth" to the prohibitions against deferred rebates, fighting ships and retaliation: unfair or unjustly discriminatory contracts with or treatment of shippers under specified circumstances; the standard ("discriminating and unfair") in the provision empowering the Board to cancel or modify agreements became "unjustly discriminatory and unfair." The bill was promptly reported out of the Merchant Marine and Fisheries Com-

mittee with a report that set forth *in extenso* the recommendations in the 1914 report of the investigation of the shipping industry. H. R. Rep. No. 659, 64th Cong., 1st Sess. 27-31. The debate in the House centered around the ship purchase and lease provisions of the bill, and the bill passed the House with no detailed consideration of the regulatory provisions. In the Senate, the hearings before the Committee on Commerce were also concerned primarily with the ship purchase and lease provisions, as were the floor debates. Once again, the Committee report set forth the recommendations arising out of the 1914 investigation. S. Rep. No. 689, 64th Cong., 1st Sess. 7-11. With no relevant amendment to the regulatory portions of the bill, H. R. 15455 passed the Senate and became law in September of 1916. 39 Stat. 728.

As enacted, then, the statute provided for the following scheme of regulation. Carriers subject to the Act must file with the Board copies of agreements establishing (*inter alia*) preferential or cooperative arrangements. Such of these as the Board finds "to be unjustly discriminatory or unfair . . . or to operate to the detriment of the commerce of the United States, or to be in violation of this Act," it may disapprove, cancel or modify; all others it must approve, and those approved are exempt from the antitrust laws (§ 15). As to any "rate, fare, charge, classification, tariff, regulation, or practice" of carriers that the Board finds to be unjust or unreasonable, it may take corrective measures (§ 18). As an exception to, or qualification upon, this scheme, certain practices were specifically outlawed and may not, therefore, be approved by the Board: to allow deferred rebates, use fighting ships,

" . . . Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or

unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason,”

and treat or contract with shippers in certain unfair or unjustly discriminatory ways; violation of this provision is a misdemeanor punishable by a fine of up to \$25,000 (§ 14).⁶

The form that this regulation takes, considered in light of its legislative background, makes clear the congressional purpose. It was found that abuses and discriminations were inherent in the international shipping trade when it was conducted on the basis of cooperation among competitors. It was further found that the alternative to cooperation was cut-throat competition leading to monopoly and, more particularly, working to the serious detriment of American carriers and shippers and to the advantage of their foreign competitors. The conclusion was that the system of cooperation must be domesticated and exposed to, and policed by, a continuing process of regulation. Only the flagrant abuses were flatly prohibited. The pervading purpose of the Shipping Act is to be found in a statement made in the House debate by Representative Burke, a majority member of the Alex-

⁶ It is worth noting that in §§ 14, Fourth, and 15 the statute speaks in terms of “unjust” discrimination, a standard to which it was quite clearly the legislative purpose for the Board to give substance and meaning. Congress had no intention of condemning all of the practices described by the very general language of the two provisions; it relied on the Board to prevent only those that are unwarranted by the competitive situation in which they are found. But in § 14, Third, no such qualification was adopted, for the kind of “discriminating and unfair methods” toward which Congress was directing its attention had been clearly identified (*i. e.*, by retaliation against shippers), and they were to be flatly prohibited irrespective of the circumstances in which they might be practiced.

ander Committee during both the investigation and the consideration of the various bills:

“Your committee at the conclusion of such hearings and after consideration and due deliberation made its report to Congress upon the subject with many valuable recommendations. Among the recommendations made in such report to Congress were that laws should be passed prohibiting the grossest and most vicious of such unfair practices

“It was found by your committee that many of the unfair practices had become so firmly established and contained in many instances elements of usefulness that, with the exception of some of the more prominent ill practices, it was considered that a system of regulation and control of water transportation would be for the best interest of both the public and those interested in water transportation.” 53 Cong. Rec. 8095.

It is important to keep in mind the relation of this scheme of regulation to the antitrust laws. Prior to the enactment of the Shipping Act, the ocean transportation industry was, of course, subject to the antitrust laws, and, indeed, as has been noted, proceedings under the Sherman Act had been brought against several conferences by the Government. Congress might have provided that, in addition to being subjected to the general surveillance involved in a comprehensive pattern of regulation, the steamship owners must continue to conform to the affirmative policy in favor of a high level of competition that underlies the antitrust laws. Such was the condition in which legislation had placed the railroads. They were subject to both Interstate Commerce Commission regulation and the outlawry of the Sherman Act. *United*

States v. Trans-Missouri Freight Assn., 166 U. S. 290; *United States v. Joint Traffic Assn.*, 171 U. S. 505. Not until 1920 were agreements among rail carriers excepted from the antitrust laws. § 407, Transportation Act of 1920, 41 Stat. 456, 480, amending § 5 of the Interstate Commerce Act, 24 Stat. 379, 380. With respect to ocean transportation, however, Congress from the beginning chose to exempt agreements among carriers and between carriers and shippers from the antitrust laws. They thus rejected court-determined competition and preferred to rely upon regulation under an expert administrative agency.

It is in the light of this background that we must consider § 14, Third, of the Shipping Act of 1916, which both the Court of Appeals and this Court have construed as prohibiting the dual-rate contract system. The section imposes a heavy fine for conduct it makes criminal and so should be strictly construed. See *Yates v. United States*, 354 U. S. 298, 304–305. It deserves narrow construction also on the ground that it is an undoubted exception to a comprehensive and complex scheme of regulation by the Board. For it must be construed not as though it were an isolated piece of writing but as part of a reticulated scheme of government for the shipping industry. No form of conduct should be brought within its terms that was not designed to be included. As the foregoing survey of the legislative history demonstrates, there is no evidence of such purpose with respect to the dual-rate contract system. The evidence in fact points to the intention of its exclusion.

Under no fairly applicable meaning of the word “retaliation” can the conclusion of the Court of Appeals, that the initiation and maintenance of a dual-rate contract system is retaliation, be sustained. It is clear from the congressional history that the framers of the legislation were concerned with certain forms of conduct, notably refusal of available accommodations, directed against

shippers because they had previously done such things as shipping by an independent line or publicly filing complaints against carriers. The very concept of retaliation is that the retaliating party takes action against the party retaliated against after, and because of, some action of the latter. In the dual-rate contract system, there is nothing of this "getting even"; the parties simply enter into an agreement that is designed to guide their future conduct but in no way depends upon or arises out of past conduct. It does violence to the English language—and certainly to the duty of reading congressional language in context—to characterize such a contractual arrangement as "retaliation." As conduct relating to the competitive struggle between carriers combined in a conference and those who prefer to stay out—yes; as an act of reprisal—no.

But if the dual-rate contract system is not "retaliation," then it does not violate § 14, Third, for it seems evident that that section was directed only at retaliation. It is, indeed, rather inartfully drawn, but under the circumstances, and particularly in light of the legislative background, its ambiguities should be resolved in favor of the narrower construction. The recommendation of the Alexander Committee, *supra*, a body on which Congress placed an extraordinarily high degree of reliance with respect to the regulatory aspects of the Shipping Bill, contemplated nothing but "retaliation." When, four months later, the recommendation had been put into the language of proposed legislation, it took substantially the form it takes in the statute as enacted. No doubt, the intention to limit the application of the provision to "retaliation" is not so clear in the statutory language as it was in the recommendation; however, since there is no evidence of purposefulness in this change, and no apparent reason for it, the alteration in language should not be regarded as having effected a decisive change in the substance of

the provision. Attaching such drastic significance to this change in wording has no supporting reason and is contradicted by the underlying philosophy of the legislation. This conclusion is emphasized by the fact that after the change the Committee Reports in both Houses of Congress quoted the language of the recommendation in support of the proposed legislation without qualification. And in the House debate, when Representative Alexander was briefly summarizing the provisions of the bill, he said, in describing the provision that became § 14, Third, nothing more than that it "forbids retaliation against shippers who patronize other carriers, or complain of unfair treatment by refusing, or threatening to refuse, space accommodations when available, or by other unfair practices" 53 Cong. Rec. 8080. Surely, when there is nothing in the legislative history to suggest that Congress wished to prohibit the dual-rate contract system of which they were fully aware, and everything to suggest that § 14, Third, was designed to respond solely to an entirely different problem, that section cannot be stretched to embrace that practice and thereby to undercut the rationale of the legislation.

The Court's construction makes of the latter portions of § 14, Third, a general catch-all. The relevant words, as abstracted from the entire provision, would be these: "no common carrier by water shall directly or indirectly . . . resort to . . . discriminating or unfair methods . . . for any . . . reason." Such a provision—even if it be limited to conduct designed to "stifle" competition—would not only make the remainder of § 14 redundant but would be inconsistent with the whole philosophy, not to say the language, of much of the regulatory portion of the Shipping Act. There is nothing in the words of the statute or in its congressional background to indicate that Congress intended to bury such a broad prohibition in the third portion of a four-part penal section. Moreover, as noted above, the most probable

explanation for the generality of the language in § 14, Third, is that Congress sought to cover forms of retaliation that shippers had been afraid to bring to the legislators' attention.

Nor is there any merit to the suggestion that if Congress made "deferred rebates" unlawful, the practice of dual-rate contracts—although not specifically prohibited—should also be unlawful because it has "the same objectionable purpose and effect." This mode of approach is a judicial utilization of the salesmanship that offers something as "just as good." This Court certainly has not the power to say that conduct is unlawful simply because it is "just as bad" as some conduct that Congress has specifically prohibited. The principal basis that the Alexander Committee set forth for its conclusion that deferred rebates were objectionable was precisely that the rebates were deferred. The Committee, in outlining the objections that had been made to steamship agreements, noted that "[b]y deferring the payment of the rebate until three or six months following the period to which the rebate applies ship owners effectively tie the merchants to a group of lines for successive periods." Report, *supra*, at 307. The Committee recited the contention that "the ordinary contract system does not place the shipper in the position of continual dependence that results from the deferred rebate system" (*ibid.*); it is not unlikely that they had in mind the dual-rate contract system. This Court in *Swayne & Hoyt, Ltd., v. United States*, 300 U. S. 297, adopted that point of view when it said (300 U. S., at 307, n. 3): "The Committee recognized that the exclusive contract system does not necessarily tie up the shipper as completely as 'deferred rebates,' since it does not place him in 'continual dependence' on the carrier by forcing his exclusive patronage for one contract period under threats of forfeit of differentials accumulated during a previous contract period."

Twice this Court has rejected the contention that it now accepts. Twice this Court has held that the Shipping Act of 1916 did not render illegal *per se* a dual-rate contract system enforced by a combination of steamship carriers essentially like the one now before the Court, whereby lower rates are tied to an agreement for exclusive carriage. Such were the decisions, upon full consideration, in *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, in 1932 and again in *Far East Conference v. United States*, 342 U. S. 570, in 1952 by a wholly differently constituted Court. In both these cases the claim was that such a dual-rate system constituted a combination in violation of the Sherman Act, for which relief by way of an injunction could be had by a competing carrier outside the conference, as in the *Cunard* case, and by the United States, as in the *Far East Conference* case, under § 4 of the Sherman Act. The immediate issue in both cases was, of course, the applicability of the principle of "primary jurisdiction"—that is, whether the legality of a dual-rate system could be adjudicated by a United States District Court without a determination by the Federal Maritime Board as to whether "the matters complained of" (*United States Navigation Co. v. Cunard S. S. Co.*, *supra*, at 478) and whether the dual-rate system "on the merits" (*Far East Conference v. United States*, *supra*, at 573) offend the Shipping Act of 1916. The doctrine of "primary jurisdiction" was recognized by Mr. Chief Justice Taft as an achievement whereby its author, Mr. Chief Justice White, "had more to do with placing this vital part of our practical government on a useful basis than any other judge." (257 U. S. xxv.) The Court's opinion makes of it an empty ritual.

By virtue of these two decisions, an independent shipowner who claimed to be hurt by the operation of a dual-rate contract system, employed as a competitive measure

against him by a shipping conference, could not bring his complaint to court as might a manufacturer hurt by an analogous combination competitor. Such a shipowner would have to appeal to the Federal Maritime Board, as did Isbrandtsen. The ensuing Board proceedings would probably be similar to those in this case. On Isbrandtsen's protests, filed January 12, 1953, and amended on January 19, hearings were conducted before a Board Examiner from October 5 to December 23, 1953, in which was compiled a record of over 4,500 pages of testimony and over 150 exhibits. The examiner rendered his recommended decision on September 13, 1954, but on October 6 the Board remanded the record for supplemental findings of fact; these supplemental findings were served on January 17, 1955. Eleven months later the Board filed its detailed, comprehensive report approving the conference's dual-rate system (as amended in accordance with the Board's report) as not unjustly discriminatory or unfair, nor likely to operate to the detriment of the commerce of the United States, nor in violation of the Shipping Act. But all this elaborate process and determination are legally meaningless. The agency is made to serve as a circumlocution office. The sole function of this carnival of procedural emptiness is that of a formal preliminary to a suit in a federal court. For such a suit, the Court now holds, is to proceed in complete disregard of all the hearing, weighing and interpreting of evidence before the Board. The Court is to make a ruling of law with entire indifference to all the findings of the expert body set up to make appropriate findings on the basis of the law's policy. Surely it is a form of playfulness to make resort to the Board a prerequisite when the judicial determination of law could have been made precisely as though there had been no proceeding before the Board. This is to make a mockery of the doctrine of primary

jurisdiction and to interpret the decisions in the *Cunard* and *Far East Conference* cases as utterly wasteful futilities.

Until today the doctrine of "primary jurisdiction" was not an empty ritual. Its observance in scores of cases was not a wasteful futility. In denying to the District Courts jurisdiction in situations like those in the *Cunard* and *Far East Conference* cases the doctrine of primary jurisdiction was not devised for the purposeless delay of giving the same jurisdiction to Courts of Appeals, on condition that they use the administrative agency as a sterile conduit to them. Such a view would denigrate and distort the significance of one of the most important movements in our law. Legal scholars have rightly compared it to the rise of equity, a view endorsed by this Court through Mr. Chief Justice Stone, himself a scholar. See *United States v. Morgan*, 307 U. S. 183, 191. The utilization of these administrative agencies is a legislative realization, judicially respected, that the regulatory needs of modern society demand law-enforcing tribunals other than the conventional courts. The doctrine of primary jurisdiction, based as it is on the discharge of functions for which courts normally have neither training and experience nor procedural freedoms, is an essential aspect of this modern administrative law. It is a means of achieving the proper distribution of the law-enforcing roles as between administrative agencies and courts. It gives these agencies the necessary scope for exploring a wide realm of facts, not to be confined within the exclusionary rules of evidence controlling proceedings in courts, to weigh such facts with an expert's understanding and to choose between allowable inferences where wise choice so often depends on informed judgment.⁷ These agencies

⁷ "[The] differences in origin and function [between court and agency] preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience

do not supplant courts. They are subject to what may broadly be called the judicial Rule of Law. Appeal lies to courts to test whether an agency acted within its statutory bounds, on the basis of rational evidence supporting a reasoned conclusion, and ultimately satisfies the constitutional requirement of due process. Within these limits, a large range of discretion is entrusted to administrative agencies to make effective the social and economic policies adopted by Congress in the myriad concrete situations calling for their application. Whether rates are reasonable, whether discriminations are fair, whether particular combined economic arrangements are justified, whether practices that would, for industry generally, fall afoul the Sherman Act are permissible under a legislative regime for a particular industry that to that extent supersedes the antitrust laws—these and like questions come within the operation of the doctrine of primary jurisdic-

of courts. Thus, this Court has recognized that bodies like the Interstate Commerce Commission, into whose mould Congress has cast more recent administrative agencies, 'should not be too narrowly constrained by technical rules as to the admissibility of proof,' *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties. Compare *New England Divisions Case*, 261 U. S. 184. To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play. They require that interested parties be afforded an opportunity for hearing and that judgment must express a reasoned conclusion. But to assimilate the relation of these administrative bodies and the courts to the relationship between lower and upper courts is to disregard the origin and purposes of the movement for administrative regulation and at the same time to disregard the traditional scope, however far-reaching, of the judicial process. Unless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U. S. 134, 143-144.

tion, and it limits the power of courts to pass on their merits.

Contrariwise, where a decision of a case depends on determination of a question of law as such, either because of explicit statutory outlawry of some specific conduct or by necessary implication of judicial power because not involving the exercise of administrative discretion or the need of uniform application of specialized competence, the doctrine of primary jurisdiction has no function, because there is no occasion to refer a matter to the administrative agency. *Great Northern R. Co. v. Merchants Elevator Co.*, 259 U. S. 285 (reaffirmed in *United States v. Western Pacific R. Co.*, 352 U. S. 59, 69); *Texas & Pacific R. Co. v. Gulf, C. & S. F. R. Co.*, 270 U. S. 266; *Civil Aeronautics Board v. Modern Air Transport, Inc.*, 179 F. 2d 622, 624-625; see Davis, *Administrative Law*, 666-668. The course of decisions was accurately summarized in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 254: ". . . we know of no case where the Court has ordered reference of an issue which the administrative body would not itself have jurisdiction to determine in a proceeding for that purpose." It would be a travesty of law and an abuse of the judicial process to force litigants to undergo an expensive and merely delaying administrative proceeding when the case must eventually be decided on a controlling legal issue wholly unrelated to determinations for the ascertainment of which the proceeding was sent to the agency. Such, however, is the result in this case.

The *Cunard* and *Far East Conference* decisions mean nothing if they do not mean that the denial of jurisdiction to the District Courts to entertain the suits in those cases and their reference to the Federal Maritime Board, and the holding that the complaints against the dual-rate system in those two cases must be passed on by the Board, constituted the plainest possible recognition that it was

for the Board to approve or disapprove the dual-rate contract system complained of, and, therefore, that the practice was not illegal as a matter of law—that is, by virtue of a statutory condemnation. In both cases the Court's attention was directed to the claim of *per se* illegality. In both cases the plaintiffs urged that, since the dual-rate contract system violated § 14, the Board was without power to approve it. Brief for Petitioner, pp. 47–56, *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474; Brief for United States, pp. 22–23 (incorporating by reference Brief for United States, pp. 21–45, *A/S J. Ludwig Mowinckels Rederi v. Isbrandtsen Co.*, 342 U. S. 950); *Far East Conference v. United States*, 342 U. S. 570; see also *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, 478 (argument of petitioner's counsel). And in *Far East Conference*, the claim that now prevails was a main ground of dissent. See 342 U. S., at 578–579.⁸ When an issue is squarely and

⁸ The Court in the *Cunard* case discussed the claim in the following terms:

“It is said that the agreement referred to in the bill of complaint cannot legally be approved. But this is by means clear. . . . [W]hatever may be the form of the agreement, and whether it be lawful or unlawful upon its face, Congress undoubtedly intended that the board should possess the authority primarily to hear and adjudge the matter. For the courts to take jurisdiction in advance of such hearing and determination would be to usurp that authority. Moreover, having regard to the peculiar nature of ocean traffic, it is not impossible that, although an agreement be apparently bad on its face, it properly might, upon a full consideration of all the attending circumstances, be approved or allowed to stand with modifications.” 284 U. S., at 487.

It may be noted that, after this Court ordered the dismissal of the complaints in the *Cunard* and *Far East Conference* cases, the complaining party in neither case initiated proceedings before the Board concerning the dual-rate system involved. The Government has, however, intervened in Board proceedings involving the systems of other conferences, as it did in the instant case.

fully presented to the Court and its disposition is essential to the result reached in a case, the issue is decided whether the Court says much or little, whether the opinion is didactic or elliptical. Otherwise very few opinions in which Mr. Justice Holmes spoke for the Court, in most instances tersely and often cryptically, would have formulated decisions.

Nor can these cases be distinguished on their facts. The complaints in both cases alleged that the conferences had initiated the dual-rate contract system in order to eliminate competition. See *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, 479–480; Transcript of Record, p. 6, *Far East Conference v. United States*, 342 U. S. 570. And the dual-rate agreement involved in *Far East Conference* was, if anything, more coercive and more closely analogous to a system of deferred rebates than is the one involved in the cases before the Court. It provided (§ 4) that if a shipper violated the agreement, the agreement was void, and the shipper became liable to pay “additional freight on all commodities theretofore shipped with such carriers for a period not exceeding twelve months immediately preceding the date of such shipment, at the non-contract rate or rates” *Id.*, at 18. Such an accumulation of potential liability was much more likely to result in “continual dependence” on the conference than is the liquidated damages provision in the agreement before us. The latter provides for damages of 50 percent of the freight that would have been paid under the agreement (*i. e.*, at the lower, or contract rate) for the shipment made in violation of the agreement; the agreement does not become void on account of a single violation. There is no basis for concluding that these damages are unreasonably high or that they do not bear a rational relation to the actual loss a carrier sustains when he is denied a shipment to which his contract entitles him.

Since this Court has twice rejected the theory that dual-rate contract systems violate § 14 of the Shipping Act, and since there is nothing in that statute or its legislative history to suggest that those cases were wrongly decided in the light of new knowledge not before the Court when they were decided, the question in this case is, as it was in the earlier two cases, one lying within the Board's administrative discretion. As I see no reason for overturning the detailed, well-reasoned report of the Board in these proceedings, I am of opinion that the decision of the Court of Appeals should be reversed.

SUPREME COURT OF THE UNITED STATES

NOS. 73 AND 74.—OCTOBER TERM, 1957.

Federal Maritime Board, Petitioner,

73

v.

Isbrandtsen Company, Inc., United
States of America and Secretary
of Agriculture.

Japan-Atlantic and Gulf Freight
Conference; Mitsui Steamship
Co., Ltd., et al.

74

v.

United States of America, Federal
Maritime Board, Isbrandtsen
Company, Inc., and Ezra Taft
Benson, Secretary of Agriculture.

On Writs of Certio-
rari to the United
States Court of
Appeals for the
District of Co-
lumbia Circuit.

[May 19, 1958.]

MR. JUSTICE HARLAN, dissenting.

Except in one respect, I agree with the dissenting opinion of MR. JUSTICE FRANKFURTER. I do not think that this Court's decisions in *United States Navigation Co. v. Cunard Steamship Co.*, 284 U. S. 474, and *Far East Conference v. United States*, 342 U. S. 570, have the effect which that opinion attributes to them. Despite the logic of the argument flowing from the doctrine of primary jurisdiction, and the lack of any substantial factual distinction between the agreements in those cases and in this one, I am unable to read *Cunard* and *Far East Conference* as having determined, without any discussion, the far-reaching question which has been decided today. See especially *Cunard*, 284 U. S., at 483-484, 487.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SHIPPING ACT, 1916

(39 Stat. 733, ch. 451, approved September 7, 1916)

* * * * * *

SEC. 14. That no common carrier by water shall directly or indirectly—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense; *Provided, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this Act, by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act. The term "dual rate contract arrangement" as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree.*

Union Calendar No. 839

85TH CONGRESS
2D SESSION

H. R. 12751

[Report No. 2055]

IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 1958

Mr. BONNER (by request) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

JUNE 30, 1958

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Shipping Act, 1916.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 14 of the Shipping Act, 1916, is amended by
4 inserting at the end thereof the following: "*Provided, That*
5 nothing in this section or elsewhere in this Act, shall be
6 construed or applied to forbid or make unlawful any dual
7 rate contract arrangement in use by the members of a con-
8 ference on the effective date of this amendment, which con-
9 ference is organized under an agreement approved under
10 section 15 of this Act by the regulatory body administering
11 this Act, unless and until such regulatory body disapproves,

1 cancels, or modifies such arrangement in accordance with
2 the standards set forth in section 15 of this Act. The term
3 'dual rate contract arrangement' as used herein means a
4 practice whereby a conference establishes tariffs of rates at
5 two levels the lower of which will be charged to merchants
6 who agree to ship their cargoes on vessels of members of
7 the conference only and the higher of which shall be charged
8 to merchants who do not so agree."

9 SEC. 2. This Act shall be effective immediately upon
10 enactment and shall cease to be effective on and after June
11 30, 1960.

85TH CONGRESS
2d Session

H. R. 12751

[Report No. 2055]

A BILL

To amend the Shipping Act, 1916.

By Mr. BONNER

JUNE 2, 1958

Referred to the Committee on Merchant Marine and
Fisheries

JUNE 30, 1958

Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

12. TRANSPORTATION. Passed as reported S. 3916, to extend for two years provisions of the Shipping Act of 1916 to permit continued use of dual rate shipping conferences with lower transportation rates for those shippers shipping all cargo on vessels of conference members. pp. 11712-13
13. MINERALS. The Interior and Insular Affairs Committee ordered reported with amendments S. 4036, to provide stabilization payments to mineral producers. p. D628
14. FORESTRY. Sen. Neuberger inserted a telegram from the Klamath Falls mayor and County Judge urging amendatory legislation to delay the Klamath Indian termination program to allow for sale of the forest for harvest on a sustained yeild basis. p. 11690
15. FOREIGN TRADE. Sen. Johnston urged the defeat of the trade agreements bill. pp. 11716-17
Sen. Clark submitted an amendment to H. R. 12951, the Trade Agreements Act extension bill, to make the act permanent, and inserted the testimony of the Secretary of State before the Senate Finance Committee in support of the trade agreements program. pp. 11729-31
16. PERSONNEL ETHICS. Sens. Morse and Clark discussed the acceptance of gifts by Federal officers and employees and inserted various articles and editorials on the subject. pp. 11723-5
17. STATEHOOD. Received a petition from the Mayor and Board of Supervisors, Honolulu City and County, Hawaii, urging statehood for Hawaii. p. 11682

ITEMS IN APPENDIX

18. SMALL BUSINESS. Extension of remarks of Sen. Yarborough inserting his statement expressing gratification over Senate action on the bill to make Small Business Admin. a permanent agency of the Government. pp. A5990-1
19. WEATHER. Sen. Yarborough inserted his statement favoring the passage of S. 86, providing for an experimental research program on weather. p. A5998
20. STATEHOOD. Sen. Sparkman inserted several editorials endorsing the vote for Alaska statehood. pp. A6002-3
Rep. Fulton extended his welcome to the people of Alaska and inserted an editorial, "A Star Is Born." pp. A6028-9
21. SURPLUS PROPERTY. Rep. Keating inserted a resolution favoring H. R. 9522, which would authorize the disposal of surplus property to certain welfare and recreation agencies which are not eligible under the present law. p. A6005
22. FOREIGN AID. Rep. Harrison inserted an editorial, "No Wonder Foreign Aid Was Cut." p. A6012
Rep. Feighan inserted an editorial, "Once Again--the Waste," analyzing a report of the House Government Operations Committee with regard to the administration of the foreign aid program. p. A6028
23. ELECTRIFICATION. Extension of remarks of Rep. Green stating that the "strong opposition of the administration" to the proposed development of the Hells Canyon site is now a matter of record and inserting an editorial, "Ike Inconsistent on Electric Power Issue." p. A6019

BILLS INTRODUCED

24. CROP INSURANCE. H. R. 13262, by Rep. Abernethy, to amend the Federal Crop Insurance Act; to Agriculture Committee.
25. BUILDINGS. H. R. 13263, by Rep. Cramer, to amend the act of May 25, 1926, as amended, to require certain distribution and approval of new public building projects; to Public Works Committee. Remarks of author. p. 11794
26. CCC; GRAIN. H. R. 13268, by Rep. Jennings, authorizing the Commodity Credit Corporation to purchase flour and cornmeal and donating same for certain domestic and foreign purposes; to Agriculture Committee.
27. MINERALS. H. R. 13270, by Rep. Miller, Neb., providing for payments as incentives for the production of certain minerals; to Interior and Insular Affairs Committee.
28. WILDLIFE. H. R. 13279, by Rep. Saylor, to promote the conservation of migratory fish and game by requiring certain approval by the Secretary of the Interior of licenses issued under the Federal Power Act; to Interstate and Foreign Commerce Committee.
29. BUDGET. H. R. 13281, by Rep. Hardy, to amend the Budget and Accounting Act, 1921, so as to provide a penalty for the refusal of an official or employee of any department and agency to furnish information to the Comptroller General of the United States; to Government Operations Committee.

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COMMITTEE HEARINGS ANNOUNCEMENTS:

July 3: Extension of trade agreements authority, S. Finance
Minerals stabilization payments, H. Interior.

oOo

abilities, a general pension system was finally enacted about 25 years after the Civil War. It provided Civil War veterans with pensions on the basis of attained ages or degrees of disability, without regard to the service origin of their injuries. Because of a similar situation, similar legislation was enacted about 20 years after the Spanish-American War, for the benefit of the veterans of that war. Periodic liberalizations in the general pension rates soon made it advantageous for the veterans with service-connected disabilities to elect to shift to the general pension system.

This has not yet occurred in the case of disabled veterans of World War I and of World War II, probably largely because of the fact that Congress has been kept aware—by the DAV—of the fact that it is a primary obligation of the Federal Government first to provide adequately for Americans who have sacrificed parts of their bodies or their health in the service of their country in its Armed Forces in time of war. As the official voice of America's disabled defenders, the DAV, with the cooperation of its bigger brother veterans organizations, has played a leading role in this respect.

Although most of the more than 200,000 service-connected disabled veterans who now are Federal employees procured their positions under the Veterans Preference Act of 1944, in the enactment of which the DAV took a leading role, less than 10 percent of them are members of the DAV. Moreover, many more thousands of handicapped veterans are now gainfully employed primarily by reason of the preferential selective placements into suitable jobs which utilize their remaining abilities, in accordance with policies and procedures in all public employment offices, as required by the United States Employment Service, pursuant to many DAV suggestions.

One of these suggestions—by a DAV past national commander—resulted in the law which provides for the observance, during the first full week in October of each year, of the national Employ the Physically Handicapped Week. This, in turn, led to the formation, some 10 years ago, of the President's Committee on Employment of the Physically Handicapped, which functions on a year-round basis. Its chairman, Gen. Melvin J. Maas, is a past national commander of the DAV.

Hard working John W. Buttris is the DAV national director of employment. He is also the custodian at the DAV national service headquarters.

Another unique development, following the formation of the DAV in 1920, has been the establishment of accredited national service officers—in lieu of the former pension attorneys, whose fees were generally 10 percent of all benefits procured. These national service officers furnish pertinent information, advice, counsel, and assistance to disabled veterans, in helping them to prove entitlement to various types of governmental benefits to which they may be equitably and lawfully entitled.

After starting—shortly following World War I—this system of providing

free service to disabled veterans, in connection with their respective claims, the DAV has since then maintained the largest staff of full-time national service officers maintained by any veterans organization. The staff members are located in the regional, district, and central offices of the United States Veterans' Administration. As VA accredited attorneys-in-fact, they have access to the official claim folders of veteran claimants who have furnished them with powers of attorney. All these special advocates have gone through the experience of prosecuting such claims themselves.

More than 400 handicapped veterans of World War II were accorded intensive vocational training courses, under Public Law No. 16, inaugurated by the DAV, toward the objective of becoming full-time national service officers of the DAV. The Veterans' Administration probably expended more than \$2 million in providing them with 6 months of academic training at the American University, in Washington, D. C., supplemented by 18 months of on-the-job placement training under each of 3 old-time experienced national service officers who had learned by long experience how technically to prove legal entitlement to benefits to which claimants were equitably entitled.

Because of lack of sufficient funds, the DAV has not given its national service officers salary increases proportionate to increases in the cost of living, to take care of their increased living costs for enlarging families, although the DAV has persuaded the Congress to grant such increases in the basic compensation rates for disabled veterans. Consequently, more and more resignations have occurred, so that now the DAV has a staff of only 138 full-time national service officers who serve under the conscientious national director of claims, Cicero F. Hogan, and his able assistant director, Chester A. Cash, also located at the DAV national service headquarters.

These national service officers are kept so busy in the regional offices that very few of them are able to spend any substantial time at the 173 Veterans Administration hospitals. So much more could be accomplished for so many more deserving disabled veterans if the DAV were enabled, financially, to establish a full-time national hospital contact service officer in each of such V. A. hospitals, and also as to each of the 28 physical evaluation boards maintained in the various Army, Navy, Air Force, and Marine Corps hospital throughout the country.

The net income from the DAV's fully owned "indent tag" project—operated at DAV national headquarters, 5555 Ridge Avenue, Cincinnati 13, Ohio, under the supervision of the DAV national adjutant, Vivian D. Corbly—has enabled the DAV to reexpand, on an adequate basis, its staff of national service officers, so as to have at least one serving in each of the 173 V. A. hospitals and the 28 physical evaluation boards. Increased donations from automobile owner recipients of "indent tags" would be helpful toward that end.

Also very helpful would be DAV membership by more and more of the some

2 million compensated disabled veterans. Most of them have been free riders—content to accept benefits which they have not helped obtain.

Evidently, most of these DAV eligibles are not aware of the real significance of the facts and factors involved.

As a Member of Congress, one may wonder why I believe in building up a strong voice for America's disabled defenders—through the DAV. Several very important reasons occur to me, as follows:

First. In our democracy, with its many complicated interrelationships, the better organized and stronger groups are more likely to be listened to by Congress and governmental officials than are the poorly organized and weaker groups; stronger groups consequently obtain more for themselves than do weaker groups. For instance, only 200 or 300 laws are enacted by each Congress from among the thousands of bills introduced.

Second. When more than 90 percent of the veterans eligible for DAV membership are not members, Members of Congress may come to assume that such veterans are not interested in the objectives of the DAV. In our dynamic society, benefits, as measured in dollars, will gradually become less valuable as living costs continue—with some interruptions—to rise, about doubling every 25 years. That means that static benefits will actually go downward, relatively. In other words, by doing nothing, much would be lost. So we must move ahead, just to keep even.

Third. Every compensated disabled veteran has been financially benefited by reason of attained DAV legislative objectives—many times over the amount of a DAV life membership fee of \$100, and by membership in the DAV he would be helping it to help thousands of the distressed, disheartened, disabled veterans who need the expert technical assistance of a trained DAV national service officer to convince a VA rating agency that the veteran is lawfully entitled to service connection for his handicapping disability, on the basis of factual evidence procured. Certainly those who have been so helped should feel impelled to help the DAV to help others. When a handicapped veteran is helped—either to prove service connection, to obtain increased disability compensation, medical treatment, or vocational training, or to be placed in suitable employment—his improved situation also helps his family and his community.

In the final analysis, service extended to a handicapped veteran, or his dependents, is a patriotic, unselfish service extended to our beloved country. The provision of security for America's disabled defenders is an essential factor in the provision of security for America.

The extension of much-needed personalized rehabilitation services to, for, and by America's disabled defenders, collectively cooperating together through the DAV, is a patriotic service of such great value to the individuals directly affected, and also to their dependents and their communities, that it deserves the continued support of all of America's war

more than 60 years. So the pending measure is merely a temporary measure to maintain the situation in status quo until Congress can consider the question. Bills have been introduced in both the House and Senate, and hearings are to be held on the entire question.

It would seriously affect the operation of American vessels to abandon at this time the so-called dual-rate system, because the cost of American vessels averages from 2 to 4 times the cost of foreign vessels. Consequently our shipping would have two strikes against it if some kind of crazy-rate war were to occur.

The Supreme Court suggested that Congress amend the law. The decision was divided. The minority opinion goes into great detail. The purpose of the bill is only to create a moratorium for 2 years, until the committees of Congress can go into the entire question of maritime shipping and maritime rates, as well as the common practices which have been going on for more than half a century.

The bill has the unanimous approval of the Senate Committee on Interstate and Foreign Commerce. I understand that a similar bill has been reported from the House Committee on Merchant Marine and Fisheries with unanimous approval, and that it is on the House Calendar for early action. The bill before the Senate is a sort of emergency measure.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a more complete explanation of the bill.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON S. 3916, DUAL RATE STOPGAP BILL

S. 3916 is a temporary measure, designed to prevent disruption of the one proven procedure developed by the steamship conference of the world over the past half century to prevent ruinous freight-rate wars that would be particularly damaging to United States-flag shipping.

As Senators are aware, the cost of operating an American vessel averages 2 to 4 times costs of a competitive foreign vessel. Consequently, our shipping would have two strikes against it in any rate war. Our ships couldn't possibly compete, and survive, in such an event.

The situation caused by the Supreme Court's majority decision that one of the hundred-odd conferences is illegal, is of tremendous concern to the shipping industry, with its hundred of millions of dollars presently invested, and other hundreds of millions firmly committed for the replacement of aging merchant fleets. Some of the largest exporting firms and industries, as well as many smaller firms, are greatly concerned as well.

For this reason this bill asks a moratorium of 2 years during which time the result of the Supreme Court's decision can be studied, hearings can be held, and procedures developed for meeting the situation. The dual-rate system has been in use for nearly half a century, and has won the approval of the Maritime authorities responsible under the 1936 act for fostering the development and

maintenance of adequate shipping to serve the Nation's needs in peace and war.

Twice before, the Supreme Court has refused to strike down the dual-rate system. Certainly now, when our vessel operators see their vast investments threatened, it seems reasonable to permit continuance for 2 years of a system that for more than 40 years has gone almost unchallenged. To do otherwise may cause irreparable harm to this industry which is so important to America's prosperity and security.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 3916) was ordered to be engrossed for a third reading, read the third time, and passed.

THE DISABLED AMERICAN VETERANS

Mr. JOHNSTON of South Carolina. Mr. President, as a life member of the DAV, I receive its national publication, the Disabled American Veterans Monthly, which is sent to all its members, to keep them informed about all developments which may affect the welfare of America's disabled war veterans and their dependents.

In a recent issue, I noted the statement made by Paul E. Frederick, Jr., national commander of the DAV, before the members of the House Committee on Veterans' Affairs. A wounded veteran of World War II, Commander Frederick emphasized the fact that only Americans who have been either wounded, gassed, injured, or disabled by reason of serving actively in the Armed Forces of the United States, or in those of some country allied with it, during time of war, are eligible for membership in the DAV. The DAV is, therefore, one of America's most exclusive organizations. It is the only organization whose membership is limited to Americans who have sacrificed parts of their bodies or their health on its behalf in its Armed Forces during time of war.

Formed in 1920, and congressionally chartered in 1932, the DAV is a one-purpose organization which specializes in extending much needed rehabilitation service to, for, and by America's disabled war veterans. The DAV is recognized, in several laws enacted by the United States Congress, as the official voice for America's disabled defenders.

Commander Frederick emphasized the fact that during the last 10 years the full-time DAV national service officers, located in the regional, district, and central offices of the United States Veterans' Administration—which donates office space for their convenience—succeeded in procuring additional benefits for disabled veterans and their dependents in the total sum of more than \$181 million at a cost to the DAV of \$12,197,648.51.

During that 10-year period, the DAV's nationwide staff of full-time national service officers reviewed 3,453,604 claim folders, made 1,382,863 appearances before rating boards, and obtained 537,367 favorable awards, including 99,054 for

those with service-connected disabilities, and 225,493 compensation increases.

Such invaluable rehabilitation service was extended without any charge whatsoever to the disabled veterans who received benefits therefrom, although an estimated 85 percent of them were not DAV members. This is indeed a strange situation, particularly when we note that less than 10 percent of the approximately 2 million compensated disabled war veterans are members of the DAV. Moreover, all other compensated disabled veterans have also been very substantially benefited by reason of the DAV's many legislative attainments.

The DAV was the first veteran organization to go on record, at its 1941 national convention, urging Congress, first, to increase basic rates of compensation in accordance with increases in the cost of living, and second, to provide dependency allowances for all compensated disabled veterans—objectives which, at that time, were thought by most persons, to be unattainable. Nevertheless, a 15 percent increase in the then basic rate of \$100 for permanent total disability was provided by Congress in 1944, with proportionate increases for disabled veterans with lower ratings. Since then, there have been four additional increases in the basic rates of compensation. Dependency allowances were finally provided for veterans who are disabled to the degree of 50 percent or more; but they have not yet been provided for those with lower ratings. Provision for the latter group is an important objective of the DAV under the direction of its national legislative director, Omer W. Clark, former Deputy Administrator of the Veterans Administration, and his busy assistant director, Elmer Freudenberger, also a former VA official, with offices in the DAV national service headquarters, 1701 18th Street NW., Washington 9, D. C.

The many legislative liberalizations, since World War I, in the benefits for service-disabled veterans, were enacted into law primarily by reason of the advocacy thereof by the DAV. In fact some liberalizing legislation pertaining to disabled veterans or their dependents has been enacted by every session of the Congress since the termination of World War I.

Judging by what failed to happen following our wars prior to World War I, such liberalizing laws for improved benefits for our service-disabled veterans and their dependents would not have been enacted if the collective voices of the veterans had not been heard through the DAV.

It is very significant that following the Civil War, and again following the Spanish-American War, very little liberalizing legislation pertaining to the service-disabled veterans of those wars was then enacted—probably because of the fact that there was then no organization composed exclusively of the war's wounded and disabled veterans.

Because of the distress of the increasing scores of thousands of such disabled veterans who were unable positively to prove the service connection of their dis-

I believe, however, that the practical job of carrying out that intent has been more difficult than they expected.

I recognize there are other considerations, such as American foreign policy and the effect imports limitations have on that policy. However, there is no consideration which overrides national security. If this Nation's strength is not grounded on a sound domestic petroleum industry, then in times of emergency there will be no strength.

We cannot allow ourselves to become dependent upon foreign sources of oil which, at best, are unreliable and, at worst, would be subverted against us. We need no other example of the need for a strong domestic petroleum industry than the Suez crisis of 1956 and 1957. Had Britain and France not been dependent upon Middle East oil, there would have been no reason for them to send troops against Egypt.

Had the United States been as dependent upon Middle East oil as Britain and France, American soldiers would have been involved. Because the United States had a dependable supply of petroleum which could be speedily furnished our allies in their time of need, they were free to break off the engagement and seek a more peaceful solution.

Those allies had the assurance of an ample supply of petroleum when needed. Had that supply not been available, it is possible world war III would have resulted.

I agree with the President of the United States on the importance of extending the existing authority of the trade agreements program. I believe this program can be endangered, however, by a lack of sufficient safeguards for our own industries.

Products essential to our national security can be treated differently and effectively within the trade agreements program to assure us that security which we must have.

We cannot as a nation take the risk of placing ourselves at any disadvantage in our struggle with those who would destroy us. To fail to assure ourselves of adequate supplies of petroleum at a time when those supplies would be needed most would be to jeopardize our entire security.

Of what value are the billions we appropriate for rockets, missiles, guns, and ships if we do not have the necessary fuel to operate and transport these defense materials to the needed areas of operation?

Of what value would the United States be to its allies if it were unable to maintain its own security? We have heard many times that the hope of the free world lies within the strength of the United States. If we were unable to respond to our allies' needs because of a lack of fuel, that hope would wither and die like a flower in a dried-up riverbed.

Present law—the defense amendment—provides for this security as to petroleum. However, under its present administration, it obviously leaves responsibility for the success of the imports program—and thus our security—in the hands of individuals outside Government.

Section 7 of the Trade Agreements Act still lacks the necessary guides for clearly requiring that responsibility should be kept in the hands of the President. It must be strengthened so that the intent of Congress in 1955 will not be circumvented.

As I stated a few moments ago, the intent of the Congress in 1955 was that petroleum imports would be limited to the ratio which they bore to domestic production in 1954. That intent was supported by assurances from high administration officials that this would be done under the defense amendment.

To date it has not been done.

As a result, domestic oil exploration and production activity is depressed, with imports increasing at a faster rate than domestic operations.

In 1954, total United States crude oil production averaged 6,342,000 barrels daily. Total crude and refined product imports averaged 1,052,000 barrels daily, or 16.6 percent of domestic production.

By 1957 total imports had increased to 1,570,000 barrels daily, an increase of 49 percent over 1954, while crude production had increased only 13 percent to 7,169,000 barrels daily. The ratio of imports to production had increased to 21.9 percent in 1957.

The situation has grown considerably worse in 1958. It is now estimated that for the first 6 months of 1958, total imports will average 1,560,000 barrels per day and United States crude oil production 6,460,000 barrels per day. Compared with the year 1954, imports have increased 48 percent and production less than 2 percent. The ratio of imports to production, which I was assured would be maintained at the 1954 level, has increased from 16.6 to 24.1 percent.

In my own State of Kansas, domestic production in 1954 was 327,000 barrels daily. In 1957 that production was 333,000 barrels, or a mere 1.8 percent above the 1954 level.

Total well completions in 1954 were 4,722, whereas in 1957 this facet of oil production had declined to 4,232, a reduction of 10.4 percent.

For the United States as a whole, total well completions in 1954 were 53,980, compared to 53,838 in 1957. The number of exploratory crews active in the year on which the President's Advisory Committee based its recommendations for maintaining petroleum imports was 713. In 1957, this activity had declined to 580.

Although it is recognized there is no magic formula as to any one year, it is obvious, from the activity of the domestic petroleum industry since 1954 that the Advisory Committee recommendation was a sound one. This decline trend certainly emphasizes the effect excessive imports have on a domestic industry and makes imperative corrective action by Congress.

The present voluntary program which depends upon the cooperation of all the importing companies to limit their imports to the levels suggested by the Government, has been ably administered. In most cases that cooperation has been evident. In several instances, however, importing companies have not complied

until some means of enforcement were placed in the program.

Now, I understand, action has been taken which clouds the entire program with doubt as to its legality. A suit has been filed by one of the importing companies after the Government refused shipment on a products contract because the company's compliance with the program was in doubt.

With this doubt now cast on the voluntary program as established under the authority of the defense amendment, it is imperative that the Senate Finance Committee take whatever action is necessary and write whatever language is needed to see that the intent of the defense amendment approved in the 1955 act be carried out in the best interests of the Nation.

Mr. SCHOEPPEL. Mr. President, I rise to speak in support of the amendment to the Trade Agreements Act, which earlier today was submitted by the Senator from Louisiana [Mr. LONG] on behalf of himself and 17 other Senators of whom I am one.

Recently the House of Representatives gave its approval to the President's request for a 5-year extension of his powers to enter into trade agreements.

At the outset, let me say that I agree with the objectives we are attempting to achieve through a reciprocal-trade program. But reciprocal trade is a two-way operation. Frankly, I am concerned with certain phases of this legislation and the effect this program has had on certain small businesses and other phases of our economic life.

Personally, I do not intend to ignore my obligations as a United States Senator and the responsibilities I have to protect what I consider to be the best interests of my country.

At a later date I shall have more to say about this matter. Today I desire to address myself only to the program as it relates to the oil industry.

I am in general agreement with those who advocate extension of this program in furtherance of our Nation's responsibility to seek a strong free world and the defense of our country.

I believe with equal sincerity that we must constantly and jealously guard that responsibility and the strength to respond to it. In order to do this, however, we must maintain a defense force constantly vigilant and sufficiently able to defend our country.

Also, we must have sufficient economic strength to meet the needs of our allies and to carry out our commitments under the President's trade program. We can do neither if we are not secure in our natural resources.

I fear that in one area in particular—namely, the defense amendment—the program does not go far enough to provide affected domestic industries with the assurances they must have if they are to do the job necessary to be done in order to maintain our security and thereby help insure the security of the free world.

Many of my colleagues will remember that when the Trade Act was before us in 1955, the Senate wrote into the trade law the defense amendment.

There were then many of us who felt that if we were to maintain our national security in the field of petroleum, it was necessary to hold crude oil and petroleum product imports to 10 percent of domestic production. However, with repeated assurances from those high in the executive branch of our Government that the defense amendment would be used to limit oil imports to the level established by the President's Advisory Committee on Energy Supplies and Resources Policy the year before, the measure was approved.

I did not believe then that a voluntary oil program would work; and time has proved me right.

I joined, therefore, with the late Senator Neely, who submitted an amendment to place a reasonable limit upon importations of foreign oil. I felt then that unless reasonable restrictions were imposed, our independent producers of oil—not the major companies, which own practically 90 percent of the foreign oil resources of the world—would suffer from foreign competition.

The President's Advisory Committee, composed of Cabinet members, gave long and serious consideration to the question of what was needed to maintain our national-defense base. As for petroleum, the Committee determined that crude oil and petroleum product imports in excess of the ratio which they bore to domestic production in 1954 would threaten our national-defense base.

That is the background and the basis of the Government's present voluntary program to limit imports of crude oil and a few petroleum products. This program represents a recognition by the executive branch that such imports can impair a national-defense industry.

This program has brought about a reduction in the level of imports, but it fails to carry out the intent of this body when it adopted the defense amendment to hold petroleum imports to their 1954 relationship.

Keeping in mind the fact that the primary purpose of the defense amendment is to maintain a strong domestic petroleum-producing industry, and not merely to limit imports, per se, to any one standard, let us look at what has happened to that industry since 1954, the year of the Advisory Committee's report.

In 1954, the domestic industry produced an average of 6,342,000 barrels of crude oil daily. Total imports during that year averaged 1,052,000 barrels daily. During the first half of this year, domestic crude-oil production averaged 6,460,000 barrels daily, and total imports averaged 1,560,000 barrels daily. In other words, while domestic production increased 118,000 barrels a day, imports increased more than 500,000 barrels a day.

Immediately the question comes to my mind, "Cannot the domestic petroleum industry produce enough to supply our domestic demands?"

The facts prove it can. During the first 6 months of this year the domestic petroleum industry was maintaining a shut-in producing capacity in excess of 3 million barrels a day. This is oil that cannot be produced, because there is no market available.

From 1943 to 1945, while I was Governor of Kansas, I was privileged to become Chairman of the Interstate Oil Compact Commission. This organization has as its primary concern the conservation of one of our basic natural resources, petroleum.

During that time I became familiar with the ramifications of the conservation practices adopted by the various States, including my own State of Kansas.

I was impressed with the sincerity of purpose of those people whose responsibility it is to see that this Nation maintains a continuing supply of petroleum. I was also impressed with the effect imports can have on those conservation practices.

In taking into consideration the avoidance of waste in the domestic industry, those conservationists must determine the total supply available to the United States as a whole, and what part of that total supply should come from domestic wells.

If oil from sources outside our own borders takes over an increasingly larger share of that total supply, then they necessarily must restrict domestic producers, in order not to contribute to wasteful conditions.

If these imports are left to the economic dictates of individual companies, then eventually the actions of the conservation commissions are nullified, and there is no more market for the domestic producers.

We have been told that some of our "friends" overseas are displeased with us because of the present "voluntary" limitations on oil imports. We have been warned to expect reprisals from those "friends" if further restrictions are made.

While our current production is restricted to a level of 118,000 barrels daily above the 1954 level, production in Venezuela, where our Vice President was attacked, increased in 1957 by 884,000 barrels a day over 1954.

During that same time production in the Middle East, on which our own Department of Defense has admitted we cannot rely even in peacetime, was increased 800,000 barrels a day over 1954.

As to our neighbors to the north, even before the "voluntary" program was put into effect last June, importing companies whose source of supply previously had been Canada, were switching from Canadian imports to Venezuela and Middle East oil.

When the Senate passed the defense amendment in 1955, it believed, after assurances from the executive department, that it was providing means for adequately assuring the domestic petroleum industry a sufficient share of its own market to encourage it to continue to expand at a rate commensurate with the growth in demand for its products.

I repeat, this has not occurred. Thus, further action must be taken to attain this goal.

With conditions such as these prevalent in one segment of our economy, I do not wonder that I am continually reading of increasing concern over the path of our entire economy. In matters as grave as the economic well-being and

security of the Nation, our actions must transcend partisanship in the interest of the Nation as a whole.

In closing, I want to commend the junior Senator from Louisiana [Mr. Long] for submitting the amendment which he intends to offer to the important measure which the Senate will consider in the next few days. Hence, what I shall have to say will be in support of that amendment, as a cosponsor of it.

AMENDMENT OF SHIPPING ACT OF 1916

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the present consideration of Calendar 1743, Senate bill 3916.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 3916) to amend the Shipping Act of 1916.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interstate and Foreign Commerce with an amendment, on page 1, at the beginning of line 11, to strike out "this Act" and insert "this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act", so as to make the bill read:

Be it enacted, etc., That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "Provided, That nothing in this section, or elsewhere in this act, shall be construed or applied to forbid or make unlawful any dual-rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this act by the regulatory body administering this act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

Mr. MAGNUSON. Mr. President, this is a bill which requires some explanation for the RECORD. It involves a technical question. The bill itself is a temporary measure, designed to prevent the disruption of a shipping rate procedure which has been in operation the world over for more than 60 years.

A suit was brought by one steamship company, and the Supreme Court, in a recent decision, stated that the practice under the Maritime Act and the confederations was technical illegal, but suggested that Congress amend the law. The Court went into great length in saying that this is a practice which has been going on in the maritime world for

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
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CONTENTS

Appropriations.....	7,30		
Budgeting.....	19,31		
Chemical additives.....	3		
Civil defense.....	12		
Commodity exchanges.....	6		
Dairy industry.....	23		
Electrification.....	22		
Fish.....	18		
Flag.....	23		
Foreign aid.....	16,25		
Foreign trade.....	20		
Forestry.....	1		
4-H Clubs.....	27		
Humane slaughter.....	15		
Industrial uses.....	14		
Insecticides.....	16		
Legislative program.....	21		
Marketing.....	24		
Minerals.....	9		
Nominations.....	34		
Onions.....	6		
Personnel.....	10,17,32		
Public debt.....	29		
Reclamation.....	4,35		
Research.....	14		
School aid.....	3		
Security.....	17		
Supergrades.....	32		
Taxation.....	33		
Tobacco.....	24		
Transportation.....	5,13		
Travel.....	5		
TVA.....	34		
Water.....	18		
Watersheds.....	11		
Wheat imports.....	2		
Wildlife.....	18		
Wool.....	26		

HIGHLIGHTS: Senate passed: Industrial uses research bill. Humane slaughter bill.
House passed Klamath Indian lands bill.

HOUSE

1. FORESTRY. Passed under suspension of the rules S. 3051, to provide for either private or Federal acquisition of that part of the Klamath Indian forest lands which must be sold. Rep. Aspinall stated that the bill was amended to delete the provision for harvesting timber on a sustained-yield basis. pp. 14143-52
The Agriculture Committee reported with amendment H. R. 12494, to authorize the Secretary in selling certain lands in N. C. to permit the State to sell or exchange such lands for private purposes (H. Rept. 2296). p. 14182
2. WHEAT IMPORTS. The Agriculture Committee reported with amendment H. R. 11581, to increase the import duty on wheat for seeding purposes which has been treated with poisonous substances and is unfit for human consumption (H. Rept. 2295). p. 14182
3. CHEMICAL ADDITIVES. The Rules Committee reported a rule for consideration of H. R. 9521, to amend the Federal Food, Drug, and Cosmetic Act so as to revise the definition of the term "chemical additive" to provide that it shall not include any pesticide chemicals when used in or on any raw agricultural commodity which is produced from the soil. p. 14182

4. RECLAMATION. The Interior and Insular Affairs Committee reported without amendment S. 4002, to authorize the Gray Dam and Reservoir as a part of the Glendo Unit of the Missouri River Basin project (H. Rept. 2291). p. 14182
5. TRANSPORTATION; TRAVEL. The Interstate and Foreign Commerce Committee ordered reported with amendment H. R. 8742, to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government. p. D755
6. ONIONS; COMMODITY EXCHANGES. Reps. Poage and Hoeven were excused as conferees on H. R. 376, to prohibit trading in onion futures, and Reps. Thompson, Tex., and Simpson, Ill., were appointed in their places. p. 14124
7. APPROPRIATIONS. Passed without amendment H. J. Res. 672, to authorize temporary appropriations until August 31, 1958, to various agencies until their regular 1959 appropriation bills are enacted. The resolution had been reported earlier by the Appropriations Committee (H. Rept. 2298). pp. 14124-25, 14182
8. SCHOOL AID. Agreed to the Senate amendments to H. R. 11378, to make permanent the programs providing financial assistance in the construction and operation of schools in areas affected by Federal activities, insofar as such programs relate to children of persons who reside and work on Federal property, and to extend such programs until June 30, 1961, insofar as such programs relate to other children. This bill will now be sent to the President. p. 14132
9. MINERALS. Passed under suspension of the rules S. 3817, to authorize the Secretary of the Interior to make loans for the development of mineral resources in the U. S. pp. 14146-47
10. PERSONNEL. Passed under suspension of the rules S. 25, to specify the effective date upon which changes in pay of wage-board employees shall begin following the start of a survey. pp. 14171-73
11. WATERSHEDS. Received from the Agriculture Committee letters stating that the following watershed projects had been approved by the Committee: Mill Creek, Ga.; Obion Creek, Ky.; Muddy Creek, Miss. and Tenn.; Adobe Creek, Buena Vista Creek, and Central Sonoma, Calif.; Upper Nanticoke River, Del.; Donaldson Creek, Ky.; Mud Creek, Nebr.; Peavine Mountain, Nev.; Indian Creek, Tenn. and Miss.; and Coon Creek, Wisc.; to Appropriations Committee. pp. 14174, 14181
12. CIVIL DEFENSE. Rep. Holifield commended the request of the Office of Defense and Civilian Mobilization for funds to carry out the Federal shelter construction program. pp. 14175-76
13. TRANSPORTATION. The Rules Committee reported a resolution for consideration of H. R. 12751, to extend the provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. p. 14182

SENATE

14. RESEARCH. Passed, 81 to 0, with amendments S. 4100, to provide for the increased use of agricultural products for industrial purposes through the establishment of an Agricultural Research and Industrial Administration, under the general supervision and direction of the Secretary of Agriculture, to coordinate and direct such research and development projects. pp. 14042-5

CONSIDERATION OF H. R. 12751

JULY 29, 1958.—Referred to the House Calendar and ordered to be printed

Mr. COLMER, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 652]

The Committee on Rules, having had under consideration House Resolution 652, report the same to the House with the recommendation that the resolution do pass.

○

85TH CONGRESS
2D SESSION

H. RES. 652

[Report No. 2303]

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1958

Mr. COLMER, from the Committee on Rules, reported the following resolution;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

1 *Resolved*, That upon the adoption of this resolution
2 it shall be in order to move that the House resolve itself into
3 the Committee of the Whole House on the State of the
4 Union for the consideration of the bill (H. R. 12751) to
5 amend the Shipping Act, 1916. After general debate,
6 which shall be confined to the bill and continue not to exceed
7 one hour, to be equally divided and controlled by the chair-
8 man and ranking minority member of the Committee on
9 Merchant Marine and Fisheries, the bill shall be read for
10 amendment under the five-minute rule. At the conclusion
11 of the consideration of the bill for amendment, the Com-
12 mittee shall rise and report the bill to the House with such

1 amendments as may have been adopted, and the previous
2 question shall be considered as ordered on the bill and
3 amendments thereto to final passage without intervening
4 motion except one motion to recommit.

House Calendar No. 268

85TH CONGRESS
2D SESSION

H. RES. 652

[Report No. 2303]

RESOLUTION

Providing for the consideration of H. R. 1275,
a bill to amend the Shipping Act, 1916.

By Mr. COLMER

JULY 29, 1958

Referred to the House Calendar and ordered to be
printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued July 31, 1958
For actions of July 30, 1958
85th-2d, No. 129

CONTENTS

Acreage allotments.....16	Humane slaughter.....25	Recreation.....30
Acreage reserve.....40	Lands.....16,36	Research.....19,39
Annual leave.....20	Legislative program.....26	Retirement.....14
Appropriations.....11,14	Livestock.....27	Rinderpest.....16
Area redevelopment.....13	Loans.....16	St. Laurence Seaway.....29
Budgetary reserve.....14	Marketing.....1	Small business.....12
Buildings.....16	Meatpackers.....2	Stabilization payments...6
CCC.....1,16	Minerals.....6,22	Tobacco.....16,32,38
Cornmeal.....1,16	Natural resources.....36	Transportation.....7,15
Cotton.....3	Nuts.....1	Water.....31
Desert-land entries.....5	Personnel.....9,14,20,34	Watersheds.....17
Economic situation.....23	Postal service.....37	Wheat penalties.....10
Electrification.....8,24	Price support.....33	Wild animals.....16
Extension.....21	Public debt.....8	Wildlife.....35
Farm housing research...14		
Farm income.....23		
Farm labor.....16		
Farm program.....33		
Fisheries.....21		
Flour.....1,16		
Foot-and-mouth disease..16		
Forestry.....1,4,16,18,39		
Fruits.....1,16		
Hall of Fame.....16		

HIGHLIGHTS: See page 6.

HOUSE

1. AGRICULTURE COMMITTEE reported the following bills: (p. 14339)
 - S. 479, without amendment, to grant a 50-year right-of-way for a water pipeline across the Lincoln National Forest (H. Rept. 2305);
 - S. 1245, without amendment, to provide a right-of-way to the city of Alamogordo, N. Mex., across the Lincoln National Forest (H. Rept. 2306);
 - S. 3439, without amendment, to reconvey to Salt Lake City the Forest Service Fire Warehouse lot in that city (H. Rept. 2307);
 - H. R. 8481, without amendment, to extend the forestry provisions of the Agricultural Act of 1956 to Hawaii (H. Rept. 2308);
 - H. R. 11056, without amendment, to amend the Agricultural Marketing Agreement Act so as to extend restrictions on certain imported citrus fruits, dried fruits, and nuts (H. Rept. 2309);
 - H. R. 13257, without amendment, to authorize the Secretary to exchange lands comprising the Pleasant Grove Administrative Site, Unita National Forest, Utah, with a Pleasant Grove, Utah, church (H. Rept. 2310).
 - H. R. 13268, without amendment, to authorize CCC to purchase flour and cornmeal for donation instead of having such products processed from its own stocks (H. Rept. 2317).

2. MEATPACKERS. Rep. McCormack announced that H. R. 9020, to transfer certain functions under the Packers and Stockyards Act from USDA to FTC, will not be considered this week, but that he "will try to program it before the end of the session." p. 14291
3. COTTON. The "Daily Digest" states the Subcommittee on Cotton of the Agriculture Committee "met in executive session on provisions relating to cotton on S. 407 re marketing programs for various agricultural commodities, and ordered reported to the full committee certain amendatory recommendations of the bill." p. D762
4. FORESTRY. The Interior and Insular Affairs Committee reported with amendment S. 1748, to add certain lands in Ida. and Wyo. to the Caribou and Targhee National Forests (H. Rept. 2320). p. 14339
5. DESERT-LAND ENTRIES. The Interior and Insular Affairs Committee reported with amendment S. 359, to permit desert land entries on disconnected tracts of land aggregating less than 320 acres and form a compact unit (H. Rept. 2324). p. 14339
6. MINERALS. The Interior and Insular Affairs Committee reported with amendment S. 4036, to provide stabilization payments to certain minerals producers (H. Rept. 2329). p. 14339
7. TRANSPORTATION. The Merchant Marine and Fisheries Committee ordered reported with amendment H. R. 8382, to provide for the licensing of independent foreign freight forwarders. p. D763
Passed with amendment H. R. 12751, to extend the provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. Inserted the language of the bill as passed for that of a similar bill, S. 3916. H. R. 12751 was laid on the table. pp. 14322-25, 14333-34
8. ELECTRIFICATION. The Public Works Committee ordered reported S. 1869, to provide TVA with the authority to issue bonds to finance the construction of new generating capacity. p. D763
Rep. Christopher inserted a letter from Julius Helm of the Mo. State Rural Electrification Assoc. commending him for supporting rural electrification and Federal power programs. p. 14326
8. PUBLIC DEBT. The Ways and Means Committee ordered reported H. R. 13580, to increase the public debt limit. p. D763
Rep. Patman inserted the text of his testimony before the H. Ways and Means Committee opposing an increase in the public debt limit "without safeguards against using this authority in imprudent ways which will have unnecessarily bad effects." pp. 14335-37
9. PERSONNEL. Conferees were appointed on S. 1411, to give agencies discretion in suspending or retaining on duty Federal employees prior to security hearings. Senate conferees have been appointed. p. 14290
Received from the Department of Interior a proposed bill "to permit variation of the 40-hour workweek of Federal employees for educational purposes"; to Post Office and Civil Service Committee. p. 14339
10. WHEAT PENALTIES. Rep. Hoffman inserted a newspaper editorial, "A Farmer Fights Wheat Penalties," discussing the case of a Mich. farmer "getting national attention because of his resistance to penalties imposed on him for violating commercial wheat quotas established" by this Department. p. 14314

Truly, it would be refreshing and beneficial to have these elder statesmen sitting amongst us. It would be America at her best and in her finest tradition.

On April 25, 1955, the Louisville Courier-Journal printed an editorial entitled "A Forum Is Needed, Not Just a Pension." I quote:

But they (Truman and Hoover) would hold positions of recognized distinction. * * * Freed of all thought of elective harassment, and representing the people at large, they could at their best provide the country with a continuous wealth of experienced statesmanship. It is an asset that should not go begging.

There is a great deal more that I could say with respect to the qualifications of these outstanding Americans and why they ought to be permitted to sit along beside us with floor privileges—but since I realize I am speaking to men who understand and appreciate the accomplishments of our former Presidents it would, therefore, waste your valuable time to go into further detail. We ought to give our former Presidents an honorable, active, useful retirement. At least they should have with their retirement, a staff and the privileges of the frank.

In conclusion please let me say that I am reliably informed that Mr. Truman is forced to spend several thousand dollars a year, practically his entire yearly income, on stamps, stationery, and secretarial help in order to answer the vast daily mail that he receives from the American public. This is a public service and he ought to have the privilege of the frank. It is as necessary and proper for him to have it, as it is for a Member of Congress. We are all serving the people and attending to the people's business.

Former Presidents Hoover and Truman will continue to have luster and prestige long after their accusers and detractors shall have passed on into oblivion.

I urge you to pass this legislation.

(Mr. CHELF asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN. Mr. Chairman, I have three amendments at the desk. Instead of asking for a vote of them I ask that they be printed at this point in the RECORD, together with my remarks. I assume the RECORD would show that they were rejected.

The CHAIRMAN. The gentleman withdraws the amendments.

(The amendment referred to follows:)

Amendments offered by Mr. HOFFMAN: Page 1, line 3, after the word "President" insert "and each former Vice President" and the same language after the word "President" wherever the word occurs in the bill.

Page 2, line 15, after the period, insert a new paragraph:

"C-1. Each former President who accepts such monetary allowance shall, on the convening of each Congress and every third month thereafter while Congress is in session, submit to the Congress a message and his opinion on the state of the Union and its then financial condition; his opinion on the advisability of future specific legislation; and send up specific bills to promote the general welfare of the people and the security of the Republic."

Page 2, line 19, after the word "the" insert "continental."

The CHAIRMAN. Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. WALTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 607) to provide retirement, clerical assistants, and free mailing privileges to former Presidents of the United States, and for other purposes, pursuant to House Resolution 649, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gross.

The amendments were agreed to.

The bill was ordered to be read a third time and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. GROSS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. GROSS. Unalterably opposed to the bill.

The SPEAKER. The gentleman reasonably qualifies.

The Clerk will report the motion.

The Clerk read as follows:

Mr. GROSS moves to recommit the bill S. 607 to the House Post Office and Civil Service Committee.

Mr. MURRAY. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

Mr. JOHANSEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So the motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and on a division (demanded by Mr. JOHANSEN) there were—ayes 165, noes 45.

Mr. JOHANSEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and forty-five Members are present, a quorum.

So the bill was passed.

A motion to reconsider was laid on the table.

Mr. MURRAY. Mr. Speaker, I ask unanimous consent that the House insist on its amendments to the bill (S. 607) to provide retirement, clerical assistants, and free mailing privileges to former Presidents of the United States, and for other purposes, request a conference with the Senate, and that the Speaker appoint conferees.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee [Mr. MURRAY]? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. MURRAY, MORRISON, and REES of Kansas.

Without objection, the title of the bill S. 607 will be amended to read as follows: "An act to provide retirement benefits to former Presidents of the United States and their widows."

There was no objection.

DISTRICT OF COLUMBIA APPROPRIATION BILL, 1959

Mr. RABAUT submitted the following conference report and statement on the bill (H. R. 12948) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District:

CONFERENCE REPORT (H. REPT. No. 2325)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12948) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1959, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 23, 24, 26, and 27.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 6, 8, 10, 11, 14, 15, 17, 18, 20, and 30 and agree to the same.

Amendment numbered 4: That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$399,500"; and the Senate agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$4,720,000"; and the Senate agree to the same.

Amendment numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$39,948,000"; and the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$30,730,000"; and the Senate agree to the same.

Amendment numbered 12: That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$2,017,000"; and the Senate agree to the same.

Amendment numbered 25: That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$15,832,000"; and the Senate agree to the same.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$841,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 13, 16, 19, 21, 22, 29, and 31.

LOUIS C. RABAUT,
WILLIAM H. NATCHER,
CLARENCE CANNON,
EARL WILSON,
JOHN TABER,

Managers on the Part of the House.

JOHN O. PASTORE,
JOHN L. MCCLELLAN,
LYNDON B. JOHNSON,
ALAN BIBLE,
J. ALLEN FREAR, JR.,
EVERETT M. DIRKSEN,
IRVING M. IVES,
J. GLENN BEALL,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12948) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1959, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of such amendments, namely:

FEDERAL PAYMENT TO DISTRICT OF COLUMBIA

Amendment No. 1: Reported in disagreement.

Amendments Nos. 2 and 3: Delete language proposed by the House authorizing a Federal loan of \$3,100,000 to the water fund.

OPERATING EXPENSES

Amendment No. 4—Executive Office: Appropriates \$399,500 instead of \$382,000 as proposed by the House and \$435,000 as proposed by the Senate. The increase provided is to finance the activities of the Commissioners' Youth Council.

Amendment No. 5—Department of General Administration: Appropriates \$4,720,000 instead of \$4,700,000 as proposed by the House and \$4,725,000 as proposed by the Senate.

Amendment No. 6—Office of Corporation Counsel: Appropriates \$660,060 as proposed by the Senate instead of \$650,000 as proposed by the House.

Amendment No. 7—Public schools: Appropriates \$39,948,000 instead of \$39,758,000 as proposed by the House and \$39,965,900 as proposed by the Senate.

Amendment No. 8—Department of Vocational Rehabilitation: Appropriates \$224,800 as proposed by the Senate instead of \$215,000 as proposed by the House.

Amendments Nos. 9 and 10—Department of Public Health: Appropriate \$30,730,000 instead of \$30,505,000 as proposed by the House and \$30,877,954 as proposed by the Senate; and authorize a payment of \$3.50 per outpatient clinic visit to private hospitals participating in the Medical Charities program as proposed by the Senate instead of \$3.00 per visit as proposed by the House.

Amendment No. 11—Public welfare: Appropriates \$15,140,000 as proposed by the Senate instead of \$15,000,000 as proposed by the House.

Amendment No. 12—Department of Licenses and Inspections: Appropriates \$2,017,000 instead of \$2,000,000 as proposed by the House and \$2,022,000 as proposed by the Senate. Of the increase allowed, \$10,000 is for the District of Columbia Charitable Solicita-

tion Act and \$7,000 is for the zoning regulations enforcement program.

Amendment No. 13—Department of Highways: Reported in disagreement.

Amendments Nos. 14 and 15—Department of Highways: Appropriate \$7,907,000 as proposed by the Senate instead of \$7,484,000 as proposed by the House; and provide that of the sum appropriated \$5,093,623 shall be payable from the highway fund as proposed by the Senate instead of \$4,670,623 as proposed by the House.

Amendment No. 16—Department of Highways: Reported in disagreement.

Amendments Nos. 17 and 18—Department of Motor Vehicles: Change paragraph headings as proposed by the Senate.

Amendment No. 19—Department of Motor Vehicles: Reported in disagreement.

Amendment No. 20—Department of Motor Vehicles: Appropriates \$1,042,000 as proposed by the Senate instead of \$1,465,000 as proposed by the House.

Amendments Nos. 21 and 22—Department of Motor Vehicles: Reported in disagreement.

CAPITAL OUTLAY

Amendments Nos. 23 through 28—Capital outlay, Public Building Construction: Delete language proposed by the Senate authorizing the construction of a warehouse and an additional amount for a motor vehicle safety inspection station; appropriate \$15,832,000 for construction instead of \$15,704,000 as proposed by the House and \$17,799,000 as proposed by the Senate; authorize the expenditure on July 1, 1959, of \$7,350,000 as proposed by the House instead of \$7,850,000 as proposed by the Senate; delete Senate language proposing the financing of \$81,000 from the highway fund; and authorize \$841,000 for construction services instead of \$836,250 as proposed by the House and \$862,000 as proposed by the Senate.

Amendment No. 29—Capital outlay, Department of Highways: Reported in disagreement.

GENERAL PROVISIONS

Amendment No. 30—Section 5: Limits the expenditure of funds for the payment of dues and expenses of attendance of meetings to not to exceed \$40,000 as proposed by the Senate instead of \$25,000 as proposed by the House.

Amendment No. 31—Section 12: Reported in disagreement.

LOUIS C. RABAUT,
WILLIAM H. NATCHER,
CLARENCE CANNON,
EARL WILSON,
JOHN TABER,

Managers on the Part of the House.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate; by Mr. Carrell, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3778) entitled "An act to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 11574) entitled "An act making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, and offices, for the

fiscal year ending June 30, 1959, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to Senate amendments Nos. 17, 20, and 58.

The message also announced that the Senate recedes from Senate amendment No. 1 to the above-entitled bill.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 3051) entitled "An act to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing in the alternative for private or Federal acquisition of the part of the tribal forest that must be sold, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. NEUBERGER, Mr. ANDERSON, Mr. CHURCH, Mr. WATKINS, and Mr. GOLDWATER to be the conferees on the part of the Senate.

COMMITTEE ON RULES

Mr. MADDEN. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain reports.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

SHIPPING ACT, 1916

Mr. BONNER. Mr. Speaker, I call up the bill (H. R. 12751) to amend the Shipping Act, 1916, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "Provided, That nothing in this section or elsewhere in this act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this act by the regulatory body administering this act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

Mr. BONNER. Mr. Speaker, this bill is purely temporary emergency legislation to maintain the status quo in a very important aspect of our shipping industry. Reference to section 2 will demonstrate that the act will cease to be effective after June 30, 1960.

This legislation was necessitated by a decision of the Supreme Court rendered

May 19, 1958, which held that a dual rate system proposed by the Japan-Atlantic and Gulf Freight Conference was illegal under the provisions of the Shipping Act of 1916. Although by its terms the decision applied only to this one conference, Mr. Justice Frankfurter, speaking for the minority of the Court, pointed out that the Court actually struck down all dual-rate systems which are designed to meet outside competition—see pages 26 and 28 of our committee report.

For over 40 years steamship lines of the United States and most of the rest of the world have been operating under conference systems designed to maintain stability of rates which would be charged uniformly to all shippers, big or small, and to maintain a quality and frequency of service designed to promote foreign commerce.

Conferences among competing steamship lines to fix rates charged by all of the conference members when approved by the Federal Maritime Board were legalized by the Shipping Act of 1916. These conferences, open to all qualified carriers, encounter two types of competition. First, there is the ocean tramp. This vessel does not sail on any fixed itinerary. Rather, it sails to the various portions of the world according as the best freight rates are offered—thus, skimming the cream from the trades which conference lines regularly serve. Secondly, there is the nonconference line which refuses to become a conference member. It traditionally charges lower freight rates by a fixed percentage, usually 10 percent, than the conference lines. It is able to do this not because of greater efficiency, but because by such undercharge it is enabled to carry full shiploads, and by the force of steamship economics can thus realize profits at lower rates while the conference lines, transporting only partial cargoes, are losing heavily because of their reduced carryings. In order to enable the conferences to perform their rate-stabilizing functions they have been permitted, for over 40 years, to maintain so-called dual-rate systems, under which they allow a discount from their regular tariff rates to shippers who agree to confine their cargoes to the vessels of conference members for the contract period. These dual-rate systems insure to the conference lines a hard core of cargo such as will enable the conferences to ignore tramp competition and outside nonconference competition at cut rates. Thus, they are able to maintain stability. The testimony before our committee was that our merchants are more interested in the stability of rates over long periods of time and uniformity of rates as among competitors than they are in the actual level of the rates themselves.

The Federal Maritime Board and its predecessors for 40 years have considered these dual rate systems legal. So, too, was the Supreme Court supposed to have approved of dual rate systems in two outstanding decisions—the *Cunard* case and the *Far East Conference* case. The Supreme Court decision last May in the *Japan-Atlantic and Gulf* case dealt our maritime shipping system an unexpected and severe blow. It is the plan

of our committee promptly to institute an investigation of the entire problem involved in steamship conferences and in dual rate systems. In the meantime, we consider it indispensable in order to avoid absolutely chaotic conditions in our shipping and in our import and export trades, that existing dual rate systems be preserved for the duration of our investigation. It should be well noted that the temporary legislation applies only to dual rate systems now in use. It will not legalize the *Japan-Atlantic and Gulf* dual-rate system which was the one specifically passed upon by the Supreme Court.

To indicate the widespread distress which would follow if this temporary legislation should not be adopted, it should be noted that over 60 conferences in most of the important trades in which United States merchants engage are using the dual rate system as of this date. In these conferences are all of the American subsidized carriers. These subsidized carriers are a unit in requesting us to see that this temporary legislation should be adopted. It has been said in opposition that there are numerous conferences which do not use the dual-rate system. This is true enough. However, it is to be noted that among the conferences which do not use the system are passenger conferences—as distinguished from freight conferences—to which dual rates obviously do not apply, and intercoastal conferences with respect to which the Maritime Board does not permit dual rates to be practiced. For the intercoastal trades stability of rates can be enforced by Board action, since the trades, being exclusively between domestic termini and being conducted solely by American flag carriers, are subject to different rules than those applicable to carriers in the foreign trade.

Some may raise the question whether our antitrust laws do not apply to cooperative rate making by competitive steamship companies. The relative positions of the Shipping Act on the one hand, and the antitrust laws on the other, with respect to the legality of dual rates have been decided by the Supreme Court. In *United States Navigation Company, Inc. v. Cunard Steamship Company, Ltd.* (284 U. S. 474 (1932)), a nonconference competitor attacked the dual rate system on all possible grounds. The Supreme Court held that the remedy afforded by the Shipping Act supercedes the antitrust laws, saying:

The remedy is that afforded by the Shipping Act, which to that extent supersedes the antitrust laws.

The above statement is the law today. In *Far East Conference v. United States* (342 U. S. 570 (1952)) the United States, by the Department of Justice, attacked the dual rate system of the *Far East Conference* under the antitrust laws. The Supreme Court quoted the above language from the *Cunard* case and said:

We see no reason to depart from *United States Navigation Co. v. Cunard Steamship Co.* (284 U. S. 474).

The recent *Japan-Atlantic and Gulf* case decided by the Supreme Court on

May 19, 1958 did not pass upon any antitrust problem; but far from casting any doubt upon the holdings in the *Cunard* case and the *Far East* case, actually reasserted the propositions for which they stood with respect to the antitrust laws. Thus, the majority opinion in the *Japan-Atlantic* case stated:

In *Far East Conference* the Court similarly held that the Board's primary jurisdiction precluded the United States from bringing antitrust proceedings against a shipping conference maintaining dual rates.

Therefore, if the antitrust laws are to be placed above the Shipping Act, completely new legislation to that end would be necessary. The problem is not involved in the temporary legislation, here being proposed.

The question has been raised whether the Federal Maritime Board has authority adequately to administer any anti-monopoly features of the Shipping Act. The answer is that there is ample power. Under section 15 of the Shipping Act which authorizes the Board to give life to conferences there is also the power to bring that life to an end. The act provides "all agreements, modifications, or cancellations made after the organization of the Board shall be lawful only when and as long as approved by the Board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation." If conferences and their members would attempt to continue acting cooperatively after the conference agreement has been disapproved by the Board they would, under section 15, be "liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action." The Board has made repeated use of its power over conference dual-rate systems. The most frequent illustrations are found in cases where conferences using dual rates have attempted to exclude qualified members from the conference. In those cases the Board has advised the conference that unless the new members are promptly admitted, the Board would give consideration to a cancellation of the conference agreement. *Prelph Bros. & Co., Inc. v. Cosulich-Societa* (1 U. S. M. C. 634 (1937)) and *Sprague Steamship Agency, Inc. v. A/S Ivarans Rederi* (2 U. S. M. C. 72 (1939)). Another illustration arises in cases where conference agreements are up for amendment and objection is taken by the Board on its own motion or on the objection of others to the manner in which the dual-rate system is being administered. There the Board will withhold approval of the amendment until the objectionable features in the dual-rate system are removed—*Pacific Coast European Conference Agreement* (3 U. S. M. C. 11 (1948)). In addition, the Board will deny approval of a dual-rate system which would result in a virtual monopoly and which would not be necessary to cure rate instability—*Trans Pacific Freight Conference of Japan* (4 F. M. B. (1955)).

I believe, therefore, that the Board has complete power to regulate monopoly or

restraint of trade in the shipping business. Perhaps the vigor with which it exercises its power may vary from year to year with the personnel of the Board. I suggest that the manner of administration should be kept under constant vigilance by requiring detailed reports to the Congress as to the manner in which the power is exercised. It may be that in our 2-year investigation some defects may develop which can be cured by amendatory legislation.

Our investigation will be the first general inquiry into the problems of ocean transportation since the famous report of the House Merchant Marine and Fisheries Committee in 1912 and 1913 under House Resolution 425 and House Resolution 587. The report of that committee, under the chairmanship of Joshua W. Alexander of Missouri, is a landmark in the history of ocean transportation.

We desire to emphasize that it is not the purpose of this temporary legislation to reverse a decision of the Supreme Court. The bill is so worded as to apply only to dual rate systems "in use" at the time when the legislation will be enacted. Thus, the Japan-Atlantic and Gulf Freight Conference which was involved in the Supreme Court litigation will not be admitted to the benefits of this temporary legislation.

Its effect is only to preserve the status quo. I desire to remind you again that it was the view of Mr. Justice Frankfurter that all dual rate systems were rendered illegal by the decision in the Japan-Atlantic and Gulf case. If this view is adopted by the Maritime Board or by the lower courts, the result would be that for the period during which a congressional investigation would be in progress and permanent legislation would be under discussion, conferences may be forced to abandon the prime purpose of maintaining stability in our ocean freight rates, with the resulting rate wars and chaotic conditions in our foreign commerce generally. That is a risk which I believe the Congress should be most reluctant to take.

Mr. CELLER. Mr. Speaker, H. R. 12751 was only introduced on June 2 of this year following a Supreme Court decision rendered in May 1958. The consideration given to this proposed legislation by the Committee on Merchant Marine and Fisheries was so prompt that my attention was directed to matters which seriously concern me as chairman of the Committee on the Judiciary only after the bill had been favorably reported. I regret that I was therefore unable to appear before the Committee on Merchant Marine and Fisheries and direct their attention to the serious implications of the proposed legislation insofar as the antitrust laws are concerned.

H. R. 12751, as I have said, is the aftermath of a Supreme Court decision handed down in the case of Federal Maritime Board against *Isbrandtsen*. This case held that dual rate agreements entered into with shippers by conference carriers for the purpose of curtailing competition were illegal under section 14 of the Shipping Act.

Dual rate agreements are contracts whereby the shipper who agrees to transport his wares exclusively on conference carriers is charged a lesser rate for the same service than the shipper who will not agree to sign an exclusive patronage contract. The present bill, if passed, would validate all dual rate contracts in use by members of conferences as of the date of enactment.

Mr. Speaker, for years the Antitrust Division has been attacking the validity of these dual rate agreements under the antitrust laws. In the view of the Department of Justice, with which I am heartily in accord:

The system is inconsistent with the basic tenets of antitrust philosophy because it allows a group of businessmen concertedly to employ a coercive and discriminatory rate device which is designed to drive nonmembers of the combine out of the trade, or seriously to weaken their competitive position. (H. Rept. No. 2055, p. 4 (1958).)

Why are dual rate agreements so antithetical to the principles of the antitrust laws? I have been able to find no better statement than that of the Maritime Board itself which has very frankly confessed that the principal purpose of these dual rates is monopolistic.

The contract system—

Said the Board in a brief filed in a recent case—

Should be frankly recognized as a device tending toward the monopolization of ocean commerce in particular trades by the members, collectively, of conferences which serve those trades. (Cited in *Isbrandtsen Co. v. United States* (96 F. Supp. 883 (1951)).)

Why then the present bill to legalize these discriminating dual rate agreements? According to the committee which reported it—

This is interim legislation to provide a reasonable time for thorough study of the entire operation of steamship conferences and their practices, the first in 44 years. (H. Rept. No. 2055, p. 1 (1958).)

Search as you will, however, you will find absolutely nothing in this bill purporting to authorize or require any study of steamship conferences or providing funds therefor. Nor, need I remind you, is there any need at all for such legislation if the committee wishes to study the subject of steamship conferences, a matter clearly within its jurisdiction.

The question still remains then. What is the reason for this proposed legislation? The committee expressly disavows any attempt, by this bill, to circumvent the Supreme Court's recent decision in the *Isbrandtsen* case. It declares in its report—

It is not the intent of the committee to circumvent the recent ruling of the Supreme Court in the *Isbrandtsen* case, since the Court in that instance decided the question before it on the very narrow grounds on which it was brought. The majority opinion did not set aside the dual-rate system, nor conferences as such. (Id. at 1-2.)

If by this statement, the committee intends to convey the idea that this bill would not, in effect, overturn the *Isbrandtsen* case, at least for the period of 2 years specified in the bill, then the committee is grossly in error. *Isbrandtsen*

held that a dual rate contract system, employed for the purpose of curtailing competition, was illegal under Section 14 Third of the Shipping Act of 1916. This bill, if passed, however, would change the law so that—

Nothing in this section 14 or elsewhere in this act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by members of a conference on the effective date of this amendment.

Can there be any question, then, but that this bill would overrule, by legislative fiat, the Supreme Court's decision in the *Isbrandtsen* case?

If this is all the bill would do, the objections against its passage would not be so serious. But the bill goes much further than merely to stay the application of the rule of stare decisis to the ocean transport industry following the *Isbrandtsen* case. Perhaps this is what the committee means when it says it is not trying to circumvent the ruling of the Court in that case, since by this legislation it is conferring an immunity from suit upon all dual-rate agreements presently existing among conferences of steamship carriers, whether covered by the *Isbrandtsen* ruling or not. As for justification for this drastic action, it offers none.

I serve notice that the Judiciary Committee's Antitrust Subcommittee will be interested in this exemption to the antitrust laws. During the coming recess I shall cause a thoroughgoing inquiry into the operation of these dual-rate conferences anent our antitrust laws.

There is not even a requirement in the bill that the dual-rate agreements be approved by the Federal Maritime Board in order to be validated under the proposed legislation. This in effect overturns existing law as it has been interpreted for at least 4 years. See *Isbrandtsen Co. v. United States* (211 F. 2d 51 (D. C. Cir. 1954)) holding that until such dual-rate systems adopted by conference carriers had been approved by the Maritime Board "the agreement is subject to the operation of the antitrust laws, under which price-fixing agreements are illegal per se." thus, under the proposal, all dual-rate contract systems that have been promulgated prior to date of passage by conference carriers without control or supervision remain legal for a period of at least 2 years. This is a blanket exemption virtually unprecedented in the entire annals of legislative history.

Mr. TOLLEFSON. Mr. Speaker, the bill H. R. 12751 would amend section 14 of the Shipping Act, 1916, to provide that nothing in that act shall be construed to forbid or make unlawful any dual-rate contract arrangement in effect at the time of enactment by members of a steamship conference organized under an agreement approved under section 15 of the act by the Federal Maritime Board.

The term "dual-rate contract arrangement," as used in the bill, means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which is charged to shippers who agree

to ship their cargoes on vessels of members of the conference exclusively and the higher of which is charged to those who do not.

This bill would become effective immediately upon enactment, and would continue in effect only until June 30, 1960. This is interim legislation to provide a reasonable time for thorough study of the entire operation of steamship conferences and their practices, the first in 44 years.

It is not the intent of the committee to circumvent the recent ruling of the Supreme Court in the *Isbrandtsen* case, since the Court in that instance decided the question before it on the very narrow grounds on which it was brought. The majority opinion did not set aside the dual-rate system, nor conferences as such, but merely stated that it decided as it did:

In view of the fact that in the present case the dual-rate system was instituted for the purpose of curtailing *Isbrandtsen's* competition.

This consideration, moreover, is particularly compelling in light of our present holding. Since, as we hold, section 14 third strikes down dual-rate systems only where they are employed as predatory devices.

Our committee simply wants time to study this matter. The bill would permit existing conferences and dual-rate arrangements to continue in effect until June 30, 1960. There are about 60 such conferences. The recent Supreme Court decision dealt with only one of them. However, the decision might raise questions with respect to the others and could result in chaos and confusion in the industry unless the pending measure is approved. I urge the House to approve the bill.

Mr. BONNER. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BONNER: Page 1, line 8, after the word "on", strike out the words "the effective date of this amendment" and in lieu thereof insert the words "May 19, 1958."

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

House Resolution 652 was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. BONNER. Mr. Speaker, I ask unanimous consent that all Members desiring to do so may extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs may have until midnight tonight to file a report on S. 4036.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

DEPARTMENT OF JUSTICE MOVING TO RESOLVE SMALL-BUSINESS PROBLEMS OF ASCAP MEMBERS

(Mr. ROOSEVELT asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. ROOSEVELT. Mr. Speaker, during March and April of this year Subcommittee No. 5 of the House Small Business Committee, of which I am privileged to be chairman, held a series of hearings relating to the policies of the American Society of Composers, Authors, and Publishers. During the course of these hearings evidence was developed which pointed to the serious competitive handicaps under which the smaller composers and publishers were required to operate. In many instances these handicaps appeared to stem from regulations and policies issued and applied by ASCAP.

At the conclusion of the hearings a complete set of the record of the evidence was supplied promptly to the Antitrust Division, Department of Justice, which agency had obtained a decree against ASCAP during March of 1950.

The testimony and evidence developed by the subcommittee showed that the Antitrust Division certainly would be warranted in studying this evidence with the view in mind of determining whether it should initiate further corrective action in order to preserve or restore the ability of the smaller composers and publishers to remain in business.

Since the continued existence of literally hundreds of smaller publishers and composers may well depend upon the nature of the action taken by the Department, I feel that they are entitled to know about any such action being undertaken. For this reason I am pleased to announce that I have been given to understand that the Antitrust Division is now negotiating with ASCAP representatives in an effort to resolve those competitive problems which were shown to exist by the Subcommittee's hearings.

It is heartening to learn that the Department of Justice has moved along these lines although certainly I had hoped that final action could have been taken long before this date.

It is my intention to watch eagerly the result of these negotiations in order to learn whether they will be successful in bringing about a situation wherein the smaller members of the industry can survive and compete with an acceptable degree of effectiveness.

HOURLY MEETING TOMORROW

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 11 o'clock tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CAMPAIGN EXPENDITURES

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent for the present consideration of House Resolution 656.

The Clerk read the resolution, as follows:

Resolved, That a special committee of five Members be appointed by the Speaker of the House of Representatives to investigate and report to the House not later than January 3, 1959, with respect to the following matters:

(1) The extent and nature of expenditures made by all candidates for the House of Representatives in connection with their campaign for nomination and election to such office.

(2) The amounts subscribed, contributed, or expended, and the value of services rendered, and facilities made available (including personal services, use of advertising space, radio and television time, office space, moving-picture films, and automobile and any other transportation facilities) by any individual, individuals, or group of individuals, committee, partnership, corporation, or labor union, to or on behalf of each such candidate in connection with any such campaign or for the purpose of influencing the votes cast or to be cast at any convention or election held in 1958 to which a candidate for the House of Representatives is to be nominated or elected.

(3) The use of any other means or influence (including the promise or use of patronage) for the purpose of aiding or influencing the nomination or election of any such candidates.

(4) The amounts, if any, raised, contributed, and expended by any individual, individuals, or group of individuals, committee, partnership, corporation, or labor union, including any political committee thereof, in connection with any such election, and the amounts received by any political committee from any corporation, labor union, individual, individuals, or group of individuals, committee, or partnership.

(5) The violations, if any, of the following statutes of the United States:

(a) The Federal Corrupt Practices Act.

(b) The act of August 2, 1939, as amended, relating to pernicious political activities, commonly referred to as the Hatch Act.

(c) The provisions of section 304, Public Law 101, 80th Congress, chapter 120, 1st session, referred to as the Labor Management Relations Act, 1947.

(d) Any statute or legislative act of the United States or of the State within which a candidate is seeking nomination or reelection to the House of Representatives, the violation of which Federal or State statute, or statutes, would affect the qualification of a Member of the House of Representatives within the meaning of article I, section 5, of the Constitution of the United States.

(6) Such other matters relating to the election of Members of the House of Representatives in 1958, and the campaigns of candidates in connection therewith, as the committee deems to be of public interest, and which in its opinion will aid the House of Representatives in enacting remedial legislation, or in deciding contests that may be instituted involving the right to a seat in the House of Representatives.

(7) The committee is authorized to act upon its own motion and upon such information as in its judgment may be reasonable or reliable. Upon complaint being made to the committee under oath, by any person, candidate, or political committee, setting

forth allegations as to facts which, under this resolution, it would be the duty of said committee to investigate, the committee shall investigate such charges as fully as though it were acting upon its own motion, unless, after a hearing upon such complaint, the committee shall find that the allegations in such complaint are immaterial or untrue. All hearings before the committee, and before any duly authorized subcommittee thereof, shall be public, and all orders and decisions of the committee, and of any such subcommittee shall be public.

For the purpose of this resolution, the committee, or any duly authorized subcommittee thereof, is authorized to hold such public hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the 85th Congress, to employ such attorneys, experts, clerical, and other assistants, to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to administer such oaths, and to take such testimony as it deems advisable. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by such chairman and may be served by any person designated by any such chairman or member.

(8) The committee is authorized and directed to report promptly any and all violations of any Federal or State statutes in connection with the matters and things mentioned herein to the Attorney General of the United States in order that he may take such official action as may be proper.

(9) Every person who, having been summoned as a witness by authority of said committee or any subcommittee thereof, willfully makes default, or who having appeared, refuses to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties prescribed by law.

That said committee is authorized and directed to file interim reports whenever in the judgment of the majority of the committee, or of a subcommittee conducting portions of said investigation, the public interest will be best served by the filing of said interim reports, and in no event shall the final report of said committee be filed later than January 3, 1959, as hereinabove provided.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. GROSS. Mr. Speaker, reserving the right to object, this is a resolution that is offered every 2 years; is that not correct?

Mr. McCORMACK. Yes; that is correct.

Mr. MARTIN. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield.

Mr. MARTIN. I might say to the gentleman from Iowa that this is the resolution that generally comes up when we are about ready to adjourn and I hope that is what it indicates at this time.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MAKING EQUITY CAPITAL AND LONG-TERM CREDIT MORE READILY AVAILABLE FOR SMALL-BUSINESS CONCERNS

Mr. SPENCE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 3651) to make equity capital and long-term credit more readily available for small-business concerns, and for other purposes, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. SPENCE, BROWN of Georgia, PATMAN, RAINS, KILBURN, McDONOUGH, and WIDNALL.

TRANSPORTATION ACT OF 1958

Mr. HARRIS. Mr. Speaker, I call up the conference report on the bill (S. 3778) to amend the Interstate Commerce Act, as amended, so as to strengthen and improve the national transportation system, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of July 24, 1958.)

The SPEAKER. The question is on agreeing to the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

HON. GEORGE H. CHRISTOPHER

Mr. CANNON. Mr. Speaker, in the extension of my remarks on the Honorable GEORGE H. CHRISTOPHER, included in the CONGRESSIONAL RECORD at page A6671 on July 24, 1958, I inadvertently failed to include the following letter from Mr. Julius Helm of the Missouri State Rural Electrification Association:

MISSOURI STATE RURAL
ELECTRIFICATION ASSOCIATION,
Jefferson City, Mo., March 31, 1958.

HON. GEORGE H. CHRISTOPHER,
House Office Building,
Washington, D. C.

DEAR GEORGE: May I take this opportunity to express my personal appreciation, and the appreciation of all the REA co-op officials throughout the State, for the wonderful help you gave us during the congressional committee hearings in Washington last week. As you so ably pointed out to the committee during your interrogation of various witnesses, it is difficult to understand why the farmer, through no fault of his own, has become the victim of the worst cost-price squeeze in the history of the country while practically every other segment of the national economy has been experiencing unprecedented prosperity. As you stated so forcefully during the hearings, this certainly

is no time to place a greater financial burden upon the farmer by increasing his electric utility bill, regardless of how small the increase may seem to some people.

George, I want to reiterate as sincerely and honestly as I know how our appreciation for the consistent and wholehearted support you have always given the rural electrification and Federal power programs. It is my firm conviction that if it were not for such fearless and dedicated individuals, who are not afraid to stand up on the floor of Congress and be counted, that sooner or later legislation would be enacted that would cause the rates of the REA cooperatives to be so high that only a very few farmers could afford the blessings of electricity.

Any time you are in Jefferson City I wish you would drop by for a visit.

Sincerely yours,

JULIUS HELM,
General Manager.

EAST KENTUCKY OR EAST OF SUEZ

(Mr. SILER asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. SILER. Mr. Speaker, at the beginning of this 85th Congress I sought and received a place on the House Banking and Currency Committee. My purpose was to get into a position where I could work with others on that committee, having jurisdiction over financial aid to commerce and industry, toward offering the House a piece of legislation that would try to give assistance to the industrially depressed areas of our country. The present bill, S. 3683, to be known as the Area Development Act is that proposed legislation and many legislators and technicians have worked faithfully on it for presentation to this body whenever the leadership of the House is willing for this to be done.

Along with many others here in the House, I myself come from a depressed area. Such an area is one where the levee of misfortune is so high that the flood tide of prosperity never spills over into its little valley of despondency. It is a place where the jam is never quite down on the lower shelf. It is a hungry breadline in the midst of a land flowing with milk and honey. It is a woodland where the nightingale of hope does not sing any more because the mockingbird of despair has taken over and filled up the air with all the dirges of the doomed and the desperate. The rest of the country may be gloriously riding upon a high and happy crest of prosperity, yet here and there exist a few little black spots where the word prosperity is merely something to be read in the newspapers but never experienced in a pluribus unum reality.

Now there is nothing wrong with the terrain or substance of the physical land in these various depressed areas of the rolls in verdant beauty, abounds in mineral wealth, rises high in magnificent mountain peaks. Yet, paradoxically it is something of a barren desert, that is to say, a desert in the matter of employment opportunities for its citizens. Eastern Kentucky lost about 92,000 people between 1950 and 1956, or more than

by of the Government the Commission is charged with the responsibility of objectively and impartially studying the proxy material and the persons who solicit proxies for the purpose of enforcing the statutory standards of fair and accurate disclosure to investors which are clearly set forth in and are primary objectives of the Federal security laws. The question arises should the SEC be something more than an impartial umpire? Should there be more teeth in the law? Should a small group of investors have the apparently unbridled authority to upset the social and economic life of hundreds of workers for their own pecuniary gain when there has been no economic benefit accruing to the economy from their asset liquidations? It is quite possible that our Federal security laws do not provide remedies for certain abuses. I am not in a position to appraise this possibility. I do submit, however, that there is sufficient information before the Congress to merit a thorough investigation into this area to determine whether or not our Federal securities laws should be tightened up and expanded.

This particular case is also important because of its international financial involvements. It is my understanding that the Securities and Exchange Commission has had administrative difficulties in the past with respect to its proxy rules because of the unavailability to the Commission of information as to beneficial ownership of stock held of record or otherwise by foreign financial institutions. In the instant case, it appears that the Securities and Exchange Commission attempted both directly and through the State Department to obtain this information with respect to ownership by certain Swiss financial institutions but was advised that it was contrary to the Swiss penal code to reveal information concerning agency or other fiduciary relationships between the institution and others. This is a very serious matter. This veil of secrecy precludes a full disclosure. This is a matter that has troubled many of us for some time. The very legitimate question arises as to whether or not our laws should countenance this deterrent to a full disclosure. It is certainly a legitimate point of inquiry for the Special Subcommittee on Legislative Oversight to look into this matter of foreign investment practices. Possibly our laws should be rewritten to preclude the unknown investor from investing in American industry. I state this possible solution only hypothetically because it is only a possibility for action. I submit, however, that we should be looking into this area to determine whether or not it is detrimental to the best interests of American industry and to our economy to continue to permit foreign investors to invest into our companies without disclosing where the beneficial ownership in the stock rests.

A thorough development of this question of international financial involvements will point up to the investigators another legitimate area of inquiry and that is pressures from the executive branch of the Government. This is certainly an area in which the State Department has a real interest. Their

viewpoint has been expressed, and I dare say been felt, in the past in this and other similar cases. This would give us further insight into the question of pressures that are brought to bear upon our Federal regulatory agencies.

In conclusion I would urge the Special Subcommittee on Legislative Oversight to look into this matter. It is a case that legitimately comes within the purview of the subcommittee's avowed purposes and objectives as hereinbefore stated. In my opinion this could give the Congress real insight into the nature of the activities, the functions and the procedures of one of our very important Federal regulatory agencies, the Securities and Exchange Commission. It would give us a better understanding of the real and significant pressures that are brought to bear upon this particular agency. From the study of this particular case we can better understand how the rules and regulations of the Securities and Exchange Commission are administered. It will demonstrate the effectiveness or ineffectiveness of our present laws in several important areas and their effect on American industry and our economy. I submit that a thorough investigation of this case will redound to the benefit of our country.

Mr. Speaker, it is for this and other reasons that I have developed that I suggest the Oversight Subcommittee consider this matter, and I intend to forward this material and information to the chairman of that subcommittee.

FREIGHT-CAR REGULATIONS

(Mr. COAD asked and was given permission to extend his remarks at this point in the Record.)

Mr. COAD. Mr. Speaker, I recently introduced H. R. 13355 which is a bill to provide that the Interstate Commerce Commission shall make regulations requiring that freight and other cars be equipped with reflectors or luminous material so that they can be readily seen at night.

I introduced this bill immediately after confirming reports I had received about several tragic deaths caused by car-train accidents in my district and I will not rest easy until the provisions of this bill to further prevent the needless loss of human lives caused by car-train collisions at railroad crossings are firmly established in the law.

We must recognize the fact that increased traffic on our vast network of roadways means more highway deaths unless all reasonable precautions are taken to remove or identify the dangers and hazards which confront our millions of motorists. One such danger is the unlighted freight train in a railroad crossing at night. Once the engine has passed the crossing the dark, unlighted cars blend with the night and provide little or no warning of their presence. I realize that the railroads have gone to great expense to divert their tracks over or under busy intersections, they have built an elaborate system of gates and signals at major crossings to prevent accidents, but they cannot provide bridges or gates and signals

at every single railroad crossing in the country. However, several reflectors or a strip of luminous material on the side of freight cars would reflect the headlights of an approaching car and serve as a warning and identification of the presence of a freight train in the crossing. This simple precaution would not be so burdensome to the railroads and yet it would aid our motorists in identifying unlighted trains at night.

Mr. Speaker, I urge consideration of my bill before the end of this session of the Congress, not because of any pressure or influence by any group or organization but because of my sincere belief that this simple safety measure will save human lives.

SHIPPING ACT, 1916

Mr. BONNER. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 3916) to amend the Shipping Act, 1916.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

Mr. AVERY. Mr. Speaker, reserving the right to object, and I will not object, but I make this reservation so that the gentleman from North Carolina can explain the procedure.

Mr. BONNER. This request is being made to substitute the House bill, which was passed this afternoon in the House as in Committee of the Whole for the Senate bill with respect to dual-rate contract arrangements.

Mr. AVERY. The gentleman assures us that the Senate bill is identical to the House bill passed this afternoon, as amended?

Mr. BONNER. It is the same bill as that passed by the House with the exception of the amendment.

Mr. AVERY. I withdraw my reservation of objection, Mr. Speaker.

Mr. SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "Provided, That nothing in this section, or elsewhere in this act, shall be construed or applied to forbid or make unlawful any dual-rate contract arrangement in use by the members of a conference on the effective date of this amendment, which conference is organized under an agreement approved under section 15 of this act by the regulatory body administering this act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels, the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

Mr. BONNER. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BONNER: Strike out all after the enacting clause of S. 3916 and insert the provisions of H. R. 12751 as passed.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The proceedings whereby the bill H. R. 12751 was passed were vacated and that bill laid on the table.

CORRECTION OF THE RECORD

Mr. O'HARA of Illinois. Mr. Speaker, I am in great embarrassment. Through inadvertence in my remarks in the CONGRESSIONAL RECORD of yesterday I gave credit to the State of Connecticut for one of the great jewels of the State of Rhode Island. Therefore, I ask unanimous consent to correct my remarks on page 14166 of the CONGRESSIONAL RECORD of July 29, 1958, by substituting for the word "Connecticut" the words "Rhode Island" in lines 3 and 17 in column 3.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

COMMITTEE ON THE JUDICIARY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may have permission to sit during general debate tomorrow.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

FOREIGN COMPETITION AND THE DOMESTIC ALUMINUM INDUSTRY

Mr. HENDERSON. Mr. Speaker, in the recent debate on our Nation's trade policy, I joined with many of my colleagues in calling attention to the economic damage which is being wrought in our domestic markets by the competition of products from abroad. I believe that our foreign economic policies must be based upon a primary consideration of our domestic economic well-being. In my opinion, we have often rationalized a justification for our economic foreign policies by refusing to evaluate realistically the damage these policies are causing in the economic strength and abilities of this Nation. This can be translated into conditions of growing distress in industry after industry. In the 15th District of Ohio, which I represent here, I have had an opportunity to observe this unhappy process with growing dissatisfaction.

Soon southeastern Ohio will become one of the country's important producing areas for basic aluminum. Already, tremendous aluminum production plants have been established in the central Ohio River Valley in the States of Ohio and West Virginia. These facilities are part of an industry which is regarded as essential to the Nation's defense and were established largely because of the active role of the Federal Government

in expanding the industrial mobilization base. The reasons for this Federal action can be traced to the difficulties we experienced in World War II and the Korean conflict when shortages of domestic aluminum production facilities were critical.

Today, we are witnessing distressed conditions in this industry for a combination of factors which should be, I believe, of great general concern. These factors are complex. They are related to our international trade policies as well as to the strategy of economic penetration of the Soviet Union. They demand immediate and earnest evaluation by those Federal agencies charged with responsibilities in this area. It is my hope that this problem will receive the consideration it demands. Equivocation or procrastination will only compound this situation and establish another formula whereby our major industrial productive strength can be impaired further.

The following letter from aluminum producers to the Secretary of Commerce outlines in some detail what is happening in this industry. Because of my own strong feelings about this situation, I wish to bring it to the attention of my colleagues here. The industry's letter is as follows:

JULY 24, 1958.

The Honorable SINCLAIR WEEKS,
Secretary of Commerce, United States
Department of Commerce, Washington, D. C.

DEAR MR. SECRETARY: The United States aluminum industry has been one of those most seriously affected by the recession. Efforts to regain marketing and productive strength have brought into sharp focus the present and longer range implications of inequitable competition from foreign fabricators and producers.

At the invitation of the State Department, representatives of the primary aluminum industry presented a memorandum on July 14, 1958, specifically outlining the background and scope of this industry's concern and reflecting its recognition of the international aspects of the problems involved. Enclosed is a copy of that memorandum.

Of equal importance is the consideration of many aspects of the problems by the Commerce Department and those also concerned with the maintenance of sound domestic industries. Following are highlights of some of the most pertinent of these conditions as presently exist that we believe warrant your prompt consideration:

1. Nearly a third of existing domestic aluminum producing facilities are already idle. Correspondingly, a substantial part of fabricating capacities—much in the hands of small non-integrated mill product suppliers—are in only limited use. At least 20,000 workers in the industry are unemployed. In addition, there is also under construction additional primary capacity of 578,000 tons—much of it nearly completed—that will stand idle.

Most of this capacity was created in furtherance of Government mobilization expansion programs. The additions to the capacity made since the 1955 shortage were prompted in part by Government policies to assure adequate supplies for small business.

Shipments of foreign aluminum products are supplying an increasing share of current demands; thus foreign sources of supply enjoy the fruits of a developed market at the expense of permanent domestic ones.

2. There has been a marked increase in the selling efforts of foreign fabricators and producers. Expansion of facilities abroad,

coupled with a leveling of international demand, has resulted in increased offerings of foreign aluminum products in many forms to the well established consuming markets in this country. These markets had been supplied by the presently idled United States manpower facilities. This is at the very time when domestic fabricators and producers need such business to sustain employment and operations.

3. The extent of foreign sales efforts and successes is not described adequately by published statistics. Government and industry data, accurate as historical information, do not provide significant clues as to the problems of foreign competition facing the domestic industry presently. The United States aluminum industry would be remiss in waiting to present its case until statistics confirm that which is common knowledge in the market place today. By that time, effective relief would be either more difficult or too late.

Domestic aluminum fabricators, distributors, and producers are losing business to importers, not only in pig and ingot, but in many fabricated products such as aluminum sheet and plate, foil, screw machine stock, rod, impact and collapsible tube slugs and drawn tube, to cite the principal ones. Some specific examples of this activity are covered in the appendix attached to this letter.

4. Unlike many other countries, the United States markets for aluminum products have been developed to a high degree, largely through the extensive marketing and technological efforts of domestic producers and fabricators. Huge sums of money and effort have been expended by them to overcome obstacles that stood in the way of volume usage in many fields. No major market development can be attributed to the like efforts of a foreign supplier.

5. The solution to industry's problems is the development of new and large volume markets. Experience has proven that this must be spearheaded by the industry itself. But market development—and the basic technological research and promotional efforts which goes into this effort—is vastly expensive. Only an economically sound industry is able to underwrite the very work that assures it and its customers of adequate utilization of their facilities.

6. Foreign suppliers appear to have little interest in the investment of capital and technological efforts to develop new United States markets for aluminum. Most of them look at the United States market as one of convenience, one where their dollar demands can be satisfied. During 1955, a period of tight aluminum supply, semi-fabricated products, as well as pig and ingot were sold by many of them at premium prices. Sales to non-United States markets were made at a greater rate of increase from previous volume patterns since apparently such other markets were more attractive to them. Thus domestic consumers of mill products and basic aluminum cannot be assured that most foreign sources will supply their needs on an uninterrupted basis.

Conversely, foreign suppliers may take advantage of the broad market developed in this country, during periods when their normal markets have declined, as is the situation presently. No prior contribution to the development of these markets had been made by most of them. As is generally the case, the heaviest imports generally occur just when domestic suppliers have the smallest amount of funds available for further market development and when they are counting on the realization of such earlier investments to provide sorely needed sales. Thus when world and United States aluminum markets soften simultaneously, suppliers of foreign metal reap the very benefits counted on by domestic companies to help

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued August 4, 1958
For actions of August 1, 1958
85th-2nd, No. 131

CONTENTS

Accounting.....	25		
Adjournment.....	10,27		
Administrative orders....	4		
Alaska.....	30		
Appropriations.....	38,39		
Area redevelopment.....	26		
Budget.....	23		
Civil defense.....	6		
Defense production.....	3	Foot-and-mouth disease...	37
Education.....	26	Foreign aid.....	23
Electrification.....	19	Foreign trade.....	24,26
Ethics.....	34	Forestry.....	28,36
Expenditures.....	31	Freight forwarders.....	26
Fair trade.....	14	Fruits and nuts.....	26
Farm aid.....	23	Housing.....	22,26
Farm program.....	8,11,26	Humane slaughter.....	5
Farm labor.....	12	Imports.....	21
Food additives.....	26	Legislative program...9,26	
Food distribution.....	7	Loans.....	3
Food stamps.....	12	Mineral lands.....	16,28
		Monopolies.....	35
		Public debt.....	16,26
		Radio frequencies....	20,26
		Reclamation.....	13
		Research.....	37
		Small business.....	29
		Saline water.....	13
		Social security.....	33
		St. Lawrence Seaway....	32
		Surplus property.....	15
		Transportation.....	1,17
		Water resources.....	2

HIGHLIGHTS: See page 5.

SENATE

1. TRANSPORTATION. Concurred in the House amendment to S. 3916, to extend until June 30, 1960, provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. This bill will now be sent to the President. pp. 14513-14
2. WATER RESOURCES. Passed as reported S. 4021, to establish the U. S. Study Commission on the Savannah, Altamaha, St. Mary's Apalachicola-Chattahoochee, and Alabama-Coosa River Basins. pp. 14511-13
3. DEFENSE PRODUCTION. The Banking and Currency Committee reported without amendment S. 4162, to amend the Defense Production Act to provide for the cancellation of certain productive facility loans (S. Rept. 2091). p. 14496
4. ADMINISTRATIVE ORDERS. The Judiciary Committee ordered reported without amendment H. R. 6788, to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the laws relating thereto. p. D774

5. HUMANE SLAUGHTER. Sen. Humphrey commended the reaction of the American Meat Institute to passage of the humane slaughter bill, and inserted their news release in which they stated they would work to aid in providing for humane slaughter and discussed the provisions of the bill. pp. 14517-18
6. CIVIL DEFENSE. The name of Sen. Cotton was added as cosponsor to S. 4055, to establish survival depots for civil defense evacuees in time of war. p. 14499
7. FOOD DISTRIBUTION. Sen. Flanders criticized the cutting off of CARE packages to Egyptian children, and Sen. Humphrey concurred. pp. 14500-1
8. FARM PROGRAM. Sen. Humphrey inserted a letter from the Cochran County, Tex., Farm Bureau, which he stated showed opposition to the national Farm Bureau position. The letter urged CCC and price support, opposed free markets, pointed to the processor as the central cause of higher prices, and urged that cotton legislation be delayed until after the fall referendum. pp. 14504-05
9. LEGISLATIVE PROGRAM. Sen. Johnson announced that there would be a call of the calendar for unobjected-to measures on Mon., Aug. 4. p. 14495
10. ADJOURNED until Mon., Aug. 4. p. 14519

HOUSE

11. FARM PROGRAM. The "Daily Digest" states that the Agriculture Committee "adopted, by a vote of 28-0, various amendments to S. 4071, re marketing programs for various agricultural commodities" (p. D775). Rep. McCormack announced that this bill will be considered under suspension of the rules today, Aug. 4 (p. 14539). The Agriculture Committee was granted until midnight Sat. "to file reports on certain bills" (p. 14540). It is our understanding that the bill was reported during recess, pursuant to this authority.
12. FOOD STAMPS; FARM LABOR. The Agriculture Committee ordered reported H. R. 13067, to provide for the establishment of a food stamp plan for the distribution of \$1 billion worth of surplus food commodities a year to needy persons and families in the U. S., and H. R. 10360, with amendment, to continue for 2 years the authority for the Attorney General to permit the importation of aliens for agricultural employment. p. D775
13. SALINE WATER; RECLAMATION. A subcommittee of the Interior and Insular Affairs Committee ordered reported S. J. Res. 135, with amendment, to provide for the construction of a full-scale demonstration plant for the production, from sea waters, of water suitable for beneficial purposes, and S. 4009, to increase the amount authorized to be appropriated for the Washoe reclamation project, Nev. and Calif. p. D776
14. FAIR TRADE. A subcommittee of the Interstate and Foreign Commerce Committee ordered reported with amendment H. R. 10527, to amend the Federal Trade Commission Act so as to make it lawful to fix minimum resale prices and to enforce them by contracts. p. D776
15. SURPLUS PROPERTY. A subcommittee of the Government Operations Committee ordered reported with amendment H. R. 7929, to permit the donation of surplus property to voluntary fire-fighting organizations. p. D776

other purposes", approved December 22, 1944 (58 Stat. 887).

SEC. 9. (a) The Commission is authorized and directed to prepare a final report, within the time provided for in this section, for submission to the President. Before the Commission takes final action on the approval of such report for submission to the President, it shall transmit a copy of such report to each department, agency, and governor referred to in subsection (b) of section 3 of this act. Within 90 days from the date of receipt by each such department, agency, and governor of such proposed report, the written views, comments, and recommendations of such department, agency, and governor shall be submitted to the Commission. The Commission may adopt in its report to the President and to the Congress any views, comments, and recommendations so submitted and change its report accordingly. The Commission shall transmit to the President, with its final report, the submitted views, comments, and recommendations of each such department, agency, and governor whether or not adopted by such Commission.

(c) The President shall, within 90 days after the receipt by him of the final report of the Commission, transmit it to Congress with his views, comments, and recommendations.

(d) The final report of the Commission and its attachments shall be printed as a House or Senate document.

SEC. 10. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be required to carry out the purposes of this act.

The amendments were agreed to.

Mr. JOHNSON of Texas. Mr. President, the purpose of the bill is to authorize the establishment of a United States Study Commission which would be responsible for the preparation of integrated and cooperative investigations, studies, and surveys of land and water resources in the southeastern portion of the country. The area encompassed for the study includes that portion of the southeast drainage basins which would be bounded on the northeast by the Savannah River Basin, on the south by the St. Marys-Nassau River Basin and on the west by the Alabama-Coosa River Basin system.

The Study Commission would be empowered to prepare plans for development of land and water resources of the area and to submit a report on such plans to the President. The Study Commission would be composed of 11 members who would be appointed by the President; 6 members would be from Federal departments; 4 members from the States of South Carolina, Georgia, Florida, and Alabama. The Chairman, who would be the 11th member, would be a resident of 1 of the States embraced within the study area.

The Commission would cease to exist within 3 months from the date of its submission of its final report to the President and the President shall, within 90 days after receipt of the final report transmit it to Congress with his views, comments, and recommendations.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 4021) was ordered to be engrossed for a third reading, read the third time, and passed.

CLAIM OF AUF DER HEIDE-ARAGONA, INC.

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of calendar No. 1850, S. 552.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 552) to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of Auf der Heide-Aragona, Inc., of West New York, N. J.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill.

Mr. JOHNSON of Texas. Mr. President, the measure is before the Senate at the request of the distinguished senior Senator from New Jersey [Mr. SMITH]. He has discussed it with the leadership on both sides several times. We have agreed to schedule the bill for prompt action. It seems the most convenient time to do it is now.

The purpose of the proposed legislation is to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of Auf der Heide-Aragona, Inc., of West New York, N. J., as to the liability of the United States, if any, either legal or equitable, for losses alleged to have been sustained by the claimant as the result of the performance of a contract numbered VAc-1185, dated July 25, 1941, entered into with the Veterans' Administration.

The proposed legislation provides that, notwithstanding any statute of limitations or lapse of time, suit upon such claim may be instituted by the claimant within 1 year after the date of enactment of this act, and that proceedings for the determination of the claim and review of it, and payment of any judgment, shall be had as in the case of claims over which the court has jurisdiction under section 1491 of title 28 of the United States Code—claims against the United States generally.

The proposed legislation further provides that nothing contained in it shall be construed as an inference of liability on the part of the United States Government.

I am informed the bill was reported unanimously by the Judiciary Committee. The senior Senator from New Jersey is very much interested in it. I hope it may be acted upon at this time.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 552) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That jurisdiction is hereby conferred upon the court of claims to

hear, determine, and render judgment upon the claim of Auf der Heide-Aragona, Inc., of West New York, N. J., as to the liability of the United States, if any, either legal or equitable, for losses alleged to have been sustained by the said Auf der Heide-Aragona, Inc., of West New York, N. J., as the result of the performance of a contract No. VAc-1185, dated July 25, 1941, entered into with the Veterans' Administration.

SEC. 2. Notwithstanding any statute of limitations or lapse of time, suit upon such claim may be instituted by the claimant within 1 year after the date of enactment of this act. Proceedings for the determination of such claim and review thereof, and payment of any judgment thereon, shall be had as in the case of claims over which such court has jurisdiction under section 1491 of title 28 of the United States Code.

SEC. 3. Nothing contained in this act shall be construed as an inference of liability on the part of the United States Government.

AMENDMENT OF SHIPPING ACT, 1916

Mr. MAGNUSON. Mr. President, will the Senator from Texas yield?

Mr. JOHNSON of Texas. I yield to the Senator from Washington.

Mr. MAGNUSON. I ask that the Chair lay before the Senate the amendment of the House of Representatives to the bill, S. 3916.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 3916) to amend the Shipping Act, 1916, which was to strike out all after the enacting clause and insert:

That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "Provided, That nothing in this section or elsewhere in this act shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this act by the regulatory body administering this act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed in the RECORD an explanation of the House amendment, which merely changes the effective date of the bill, and which is agreeable to all members of the Senate Interstate and Foreign Commerce Committee.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR MAGNUSON

This bill, as it passed the Senate, provided that nothing in the Shipping Act of 1916 shall be construed to forbid or make unlawful any dual rate contract arrangement in effect at the time of enactment of the bill by members of a steamship conference organized pursuant to section 15 of the act. The bill

is of a temporary nature and would continue in effect only until June 30, 1960, thus providing time for a thorough consideration of the procedures necessary to resolve the dislocation resulting from a Supreme Court decision of May 19, 1958. In that decision the Court declared illegal the dual-rate contract system of the Japan-Atlantic and Gulf freight conference.

The House amended the Senate bill so as to cover only dual-rate contract arrangements in effect on the date of the Supreme Court decision rather than those in effect on the date of enactment of this bill. In other words, any dual-rate contract arrangement entered into between the date of the Court decision and the date of passage of this bill would not be affected by this legislation, but would be subject to the Court decision.

Mr. MAGNUSON. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

AMENDMENT OF DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1669, S. 3493.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 3493) to amend the District of Columbia Unemployment Compensation Act of 1935, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on the District of Columbia with an amendment.

Mr. JOHNSON of Texas. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPENSATION TO CROW TRIBE OF INDIANS FOR CERTAIN CEDED LANDS

Mr. MANSFIELD. Mr. President, if the Senator from Oregon [Mr. MORSE] will oblige me, I should like to ask unanimous consent that the pending business be laid aside temporarily, and that the Senate proceed to the consideration of Calendar No. 2116, H. R. 11722.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H. R. 11722) to provide compensation to the Crow Tribe of Indians, for certain ceded lands embraced within and otherwise required in connection with the Huntley reclamation project, Montana, and for other purposes.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs, with an amendment, on page 20, line 7, after the word "this", to strike out "act:" and insert "act, together with interest which would have been earned in accordance with law on such revenues had they been deposited in the trust funds of the tribe, as received."

Mr. MANSFIELD. Mr. President, the bill was reported by the House Committee on Interior and Insular Affairs unanimously. The bill passed the House in the same fashion.

Mr. President, I ask unanimous consent that a statement relative to the measure under consideration be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

This is a bill to provide compensation to the Crow Tribe of Indians for certain ceded lands embraced within and otherwise required in connection with the Huntley reclamation project, Montana, and for other purposes.

There is to be hereby authorized to be transferred in the Treasury of the United States from funds now or hereafter made available to the Bureau of Reclamation and to be placed to the credit of the Crow Tribe of Indians, Montana, and expended for its benefit and the benefit of its members, pursuant to existing law, a sum of money as provided by the bill. If the payment offered by the Secretary of the Interior for the land to be taken is not accepted within 60 days, the Secretary or the Crow Tribe is authorized to commence in a court of competent jurisdiction an action for determining the just compensation payable for such taking. The fair market value of, and the just compensation payable for, the Indian interest in the lands taken shall not include any value attributable to the construction and development by the United States of the Huntley reclamation project.

The perimeter boundaries of the tract of land which are also the proposed exterior boundaries of the Huntley reclamation project, Montana, are described in the bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

DISPLAY PASTURE FOR BISON HERD ON THE MONTANA NATIONAL BISON RANGE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and that the Senate proceed to the consideration of Calendar No. 2122, H. R. 3402.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 3402) to provide for a display pasture

for the bison herd on the Montana National Bison Range in the State of Montana, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, the only bison range in the country is in the western part of the State of Nevada. It is a large spread.

This measure, which was introduced by my distinguished colleague in the other body, Representative METCALF, will provide for a display pasture for the bison herd on the Montana National Bison Range, so that the herd will be more open to the public and more easily seen. I hope this measure will receive the same unanimous agreement it received in the other body.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H. R. 3402) was ordered to a third reading, read the third time, and passed.

AMENDMENT OF DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

Mr. MANSFIELD. Mr. President, I thank the Senator from Oregon. As I understand the Senate now automatically returns to consideration of the unfinished business?

The PRESIDING OFFICER. That is correct, and the Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (S. 3493) to amend the District of Columbia Unemployment Compensation Act of 1935, as amended, which had been reported from the Committee on District of Columbia, with an amendment, to strike out all after the enacting clause and insert:

That the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946), as amended (title 46, ch. 3, D. C. Code, 1951 edition; 68 Stat. 988), is further amended as follows:

Section 3 (c) (8) is amended by adding the following:

"iv. Any employer, at any time, may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this act, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed, or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than 30 days following the mailing of notice of his rate of contribution for such year: *Provided*, That such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part."

SEC. 7. Section 7 of said act approved August 28, 1935, is amended—

(a) by striking table A in subsection (b) of said section and inserting in lieu thereof the following:

Public Law 85-626
85th Congress, S. 3916
August 12, 1958

AN ACT

72 Stat. 574.

To amend the Shipping Act, 1916.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "*Provided*, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after June 30, 1960.

Approved August 12, 1958.

